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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

4 IN RE: ASBESTOS : MDL 875 MEDIATION

7
8 WEDNESDAY, JANUARY 26, 2011
9 COURTROOM 3B
10 PHILADELPHIA, PA 19106

11 BEFORE THE HONORABLE LOWELL A. REED, JR., SJ.

12
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1 WHETHER I WOULD UNDERTAKE THE CASE. I SAID IF IT'S ON
 2 THE LIST ATTACHED TO THOSE TWO ORDERS, I'M GOLDEN. SO
 3 THOSE ARE THE TWO ORDERS THAT FORM THE BASIS FOR OUR
 4 BEING HERE WITH ME. I WOULD LIKE TO GET AN IDEA HOW
 5 MANY PEOPLE -- IF YOU JUST RAISE YOUR HAND, IT WILL HELP
 6 ME A LITTLE BIT -- IF YOU ARE HERE BECAUSE YOU WERE
 7 ASKED -- INVITED TO JOIN THE MEDIATION BY PLAINTIFF'S
 8 COUNSEL ON BEHALF OF THE COURT AND YOU'VE NOT HERETOFORE
 9 BEEN INVOLVED IN THE PROCEEDINGS, KINDLY RAISE YOUR
 10 HAND. I WANT TO SEE HOW MANY PEOPLE ARE HERE. A FAIR
 11 AMOUNT. OKAY. THANK YOU VERY MUCH.

12 I WANT TO SPEND A COUPLE OF MINUTES THEN
 13 EXPLAINING TO YOU THAT THE STATUTE IN THE MDL GIVES
 14 JURISDICTION OVER DISCOVERY IN MDL CASES TO THE
 15 TRANSFEREE COURT. THAT IS THIS COURT, JUDGE ROBRENO.
 16 AND THE STATUTE AND RULES ALSO ALLOW FOR THE TRANSFEREE
 17 JUDGE TO GET ASSISTANCE FROM HIS COLLEAGUES ON THE SAME
 18 COURT. WHAT I HAVE BEEN REFERRED TO IS THE STATUS OF
 19 COURT ANNEXED MEDIATOR AND TO HANDLE ALL DISCOVERY
 20 DISPUTES, CONCERNS AND MANAGEMENT TO THE EXTENT THAT WE
 21 USE THEM IN EXPRESS TERMS IN THE ORDERS THAT I JUST
 22 MENTIONED.

23 I ORIGINALLY THOUGHT THAT DISPUTES WITH
 24 THIRD PARTIES, OVER THIRD PARTY THAT IS A NONPARTY TO
 25 THIS CASE, DISPUTES WOULD BE HANDLED UNDER RULE 45, BUT

1 (THE CLERK OPENS COURT.)
 2 THE COURT: I TOOK MY SNOWSUIT OFF. GOOD
 3 MORNING, EVERYBODY.
 4 ALL COUNSEL: GOOD MORNING, YOUR HONOR.
 5 THE COURT: I APOLOGIZE FOR THE PEOPLE IN
 6 THE PHILADELPHIA AREA THAT DON'T KNOW HOW TO DRIVE IN
 7 THE SNOW. BUT THEY WERE ALL IN FRONT OF ME. YOU ARE
 8 WELCOME TO BE SEATED.
 9 WE HAD SEVERAL DISCUSSIONS ABOUT WHETHER
 10 WE SHOULD GO ON TODAY. I FINALLY DECIDED WE WOULD. I
 11 DIDN'T THINK THAT I WOULD BE THE BIGGEST PROBLEM.
 12 WE ARE ON THE RECORD FOR A MEDIATION
 13 MANAGEMENT CONFERENCE IN THE MATTER OF MDL 875. THOSE
 14 CASES REFER TO THIS JUDGE AS COURT ANNEXED MEDIATOR.
 15 THE TWO ORDERS THAT JUDGE ROBRENO HAS ASSIGNED TO ME ARE
 16 THE ORDERS OF MAY OF 2009 AND AUGUST OF 2010. I MENTION
 17 THESE BECAUSE THAT IS THE CORE OF THE WORK THAT I HAVE
 18 BEEN ASKED TO HANDLE IS IN THOSE TWO ORDERS. I WANT THE
 19 RECORD TO SHOW WHAT WE ARE TALKING ABOUT.
 20 MAY OF 2009, MAY 4, 2009 DOCUMENT NUMBER
 21 6206-2 ON THE TOP AND THE OTHER ONE WAS FILED AUGUST 24,
 22 2010, AND THAT IS DOCUMENT NUMBER 7430. THERE MAY HAVE
 23 BEEN A SINGLETON CASE THAT WAS DREDGED UP FROM
 24 SOMEWHERE. I DON'T KNOW. I REMEMBER IN THE LAST FEW
 25 WEEKS THAT CASE FLOATED INTO MY CHAMBERS. I WAS ASKED

1 THEY ARE NOT. WE HAVE JURISDICTION OVER DISCOVERY AND
 2 JUDGE ROBRENO HAS GIVEN ME JURISDICTION OVER DISCOVERY
 3 IN THE CASES THAT COME FROM THE CVLO LAW FIRM. ALL THE
 4 CASES THAT I HAVE BEEN ASSIGNED ARE FROM THIS PLAINTIFF
 5 LAW FIRM.
 6 SINCE THIS IS MEDIATION, I CONSTANTLY
 7 REMIND MYSELF THAT MY USUAL GRUMPY, SOCK 'EM, KNOCK 'EM,
 8 KICK 'EM IN ALL SORTS OF PARTS OF THE BODY THAT IS MY
 9 USUAL STYLE DOES NOT WORK IN MEDIATION. I HAVE TO BE
 10 CONCILIATORY. OTHERWISE HOW CAN I ASK YOU TO BE
 11 CONCILIATORY. SO I DID THE COURTEOUS THING. WE ALWAYS
 12 START WITH COURTESY BECAUSE ABOUT 80 PERCENT OF THE TIME
 13 IT WORKS. I INVITED YOUR CLIENTS TO COME IN.
 14 IF THE PARTIES TO THESE CASES THAT HAVE
 15 NOT BEEN PARTICIPATING WONDER WHAT IS GOING ON, THE
 16 PLAINTIFFS ASKED ME WHETHER WE SHOULD HAVE ALL THE
 17 PEOPLE, COMPANIES AND OTHER ORGANIZATIONS THAT ARE NOT
 18 INVOLVED SO FAR, WE WOULD LIKE TO MAKE SURE THEY HAVE
 19 THE OPPORTUNITY TO CLOSE THEIR FILES. AND I SAID, FINE,
 20 INVITE THEM IN. AND THAT IS HOW YOU GOT INVITED. BUT I
 21 INSISTED ON THESE TWO OR THREE THINGS: ONE, THAT YOUR
 22 CLIENTS NOT BE IN BANKRUPTCY; THAT THEY HAVE BEEN SERVED
 23 WITH A COMPLAINT. AND I EXPECT IN MOST OF THE CASES --
 24 AND I DON'T LOOK AT ORIGINAL DOCKETS BECAUSE THERE ARE
 25 SO MANY OF THEM, BUT I ASSUME ALMOST NOTHING HAS BEEN

1 DONE IN THOSE CASES FOR SEVERAL YEARS. IS THAT THE
 2 GIST? IS THAT STATEMENT PROBABLY CORRECT?
 3 MR. EVERT: YES, YOUR HONOR.
 4 MR. MCCOY: JUDGE, THAT IS WHAT
 5 PLAINTIFFS UNDERSTAND.
 6 THE COURT: THERE WERE SOME MODEST
 7 CRITERIA, SERVED WITH A COMPLAINT AND NOT IN BANKRUPTCY.
 8 I CAN'T TELL YOU WHY YOU HAVE NOT BEEN INVOLVED FOR
 9 SEVERAL YEARS. WE ARE NOT HERE TO HANDLE -- I HAVE NO
 10 AUTHORITY TO HANDLE DISPOSITIVE MOTIONS IN ANY EVENT.
 11 AFTER YOU THINK ABOUT IT, IF YOU -- THERE ARE SEVERAL
 12 THINGS: ONE, IF YOU WANT TO SETTLE DIRECTLY WITH THE
 13 PLAINTIFFS ON ANY, IN AN APPROPRIATE MANNER, APPROPRIATE
 14 SUM OF MONEY, WHATEVER IS AGREEABLE, BE MY GUEST,
 15 SETTLE YOUR CASES. THAT IS ONE WAY TO GET CONTROL OF
 16 THEM.
 17 IF YOU DON'T SETTLE THEM PROMPTLY, THEN
 18 WE WILL HAVE TO WORK OUT A COMMUNICATION SYSTEM, EITHER
 19 GET YOU ON OUR CURRENT LIST, ENTER APPEARANCES AS
 20 APPROPRIATE AND GET ON THE SERVICE LIST SO THAT YOU GET
 21 COPIES OF ALL OF THE THINGS THAT GO ON.
 22 THE MEDIATION STYLE THAT I'M AUTHORIZED
 23 TO ADOPT BY THE LANGUAGE OF THE ORDERS THAT I MENTIONED
 24 INCLUDE A COUPLE OF IMPORTANT FEATURES OF THIS
 25 MEDIATION: ONE, WE DON'T FILE ANYTHING WITH THE CLERK

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1 OF COURT. NONE OF THE LETTERS AND DOCUMENTS THAT GO
 2 BACK AND FORTH GET FILED WITH THE CLERK UNLESS IT HAS TO
 3 DO WITH A DISPOSITIVE MOTION SUCH AS WE DID LAST SUMMER
 4 WHEN WE HAD A GOOD NUMBER OF CASES DISMISSED AND IT WAS
 5 HANDLED BY A HEARING BEFORE JUDGE ROBRENO. AND I
 6 FACILITATED THAT, GETTING IT TO HIM BECAUSE HE DOES NOT
 7 MONITOR EVERY DAY AND EVERY WAY THAT WE WORK TOGETHER
 8 HERE. I ONLY REPORT TO HIM PERIODICALLY ON
 9 ADMINISTRATIVE MATTERS, MOSTLY.
 10 ANOTHER THING THAT IS EMBLEMATIC OF THIS
 11 MEDIATION PROCEEDING IS THAT THE PROCEEDINGS ARE
 12 CONFIDENTIAL. THAT MEANS THE FOLLOWING: ONE, THE FACT
 13 THAT WE ARE IN MEDIATION IS NOT A SECRET BECAUSE TO
 14 START WITH THERE IS A PUBLIC DOCKET THAT APPOINTED THE
 15 COURT ANNEXED MEDIATOR. IT'S NOT A SECRET. WHAT GOES
 16 ON IN THE MEDIATION IS CONFIDENTIAL. THAT IS WHY WE
 17 DON'T FILE THINGS WITH THE CLERK SO THEY GET ON THE
 18 DOCKET UNLESS IT'S AN OPEN PART OF THE PROCEEDING LIKE A
 19 MOTION TO DISMISS.
 20 I WOULD -- IN ORDER TO -- FOR THOSE WHO
 21 JUST CAME INTO THE PROCEEDINGS RECENTLY, IF YOU AND YOUR
 22 CLIENT DECIDE YOU WANT TO NOT HAVE TO GO THROUGH ALL OF
 23 THE DISCOVERY OF -- I WILL TELL YOU ABOUT DISCOVERY IN A
 24 MINUTE -- BUT IF YOU DON'T WANT TO GO THROUGH THE USUAL
 25 QUEUE OF DISCOVERY CASE MANAGEMENT THAT THE NAMED

1 40,000 CASES IN THIS, OR WHATEVER THE NUMBER HAPPENS TO
 2 BE ON A GIVEN DAY, CASES ARE GOING THROUGH, THE ONES
 3 THAT DON'T HAVE MEDIATION PROCEEDING ARE GOING THROUGH,
 4 SLOGGING THROUGH THE USUAL DISCOVERY, PRETRIAL, EXPERT
 5 DISCOVERY AND ALL THAT STUFF IN THE USUAL WAY. AND
 6 THERE IS A STANDARD PRETRIAL SCHEDULING ORDER THAT IS
 7 BEING USED BY JUDGE ROBRENO AND THE SERIES OF MAGISTRATE
 8 JUDGES THAT ARE HANDLING THOSE CASES. IF YOU DON'T WANT
 9 TO GO THROUGH THAT PROGRAM, BUT YOU REALLY WANT TO
 10 SETTLE AND YOU HAVE NOT BEEN ABLE TO DO IT SO FAR, THEN
 11 YOU CAN CONTINUE WHATEVER EFFORTS YOU THINK ARE
 12 APPROPRIATE TO SETTLE THE CASE. BUT GO THROUGH THIS
 13 PROCESS AND SOMEHOW YOU WILL GET -- YOUR CLIENTS' CASES
 14 WILL GET PICKED UP. WHEN WE GET AROUND TO DECIDING THE
 15 LAST ITEM IN OUR AGENDA TODAY WHICH WE MAY NOT GET TO,
 16 BUT WHICH IS THE MEAT OF WHY WE ARE HERE TO START WITH.
 17 HOW ARE WE GOING TO GET THE REST OF THESE CASES SETTLED?
 18 WHAT MANNER OF NEGOTIATION AND/OR PLANNING DO WE THINK
 19 WE NEED TO DO THAT? SO THAT IS STILL UP IN THE AIR.
 20 ON DECEMBER 16TH OF 2010, I ISSUED WHAT I
 21 CALL -- THAT IS NOT THE RIGHT ONE, SORRY. I WANTED TO
 22 FINISH THE CONFIDENTIALITY. THERE IS AN AUGUST 27,
 23 2009, DOCUMENT CALLED AUGUST 27TH, 2009, MEDIATION RULES
 24 OF JUDGE REED AS AMENDED NOVEMBER 18, 2009. AND IT SETS
 25 FORTH THE RULE OF CONFIDENTIALITY AND IT INCLUDES YOU

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1 AND YOUR CLIENTS, PEOPLE THAT HAVE INSIDE TRACK ARE
 2 PROHIBITED FROM SPREADING THE INFORMATION BEYOND YOUR
 3 OWN LAW FIRM OR YOUR EXPERTS OR YOUR CONSULTANTS, YOUR
 4 CLIENTS, OBVIOUSLY, INCLUDING NO FAIR GOING ON ANY OF
 5 THE SOCIAL INTERNET PLAY DATES. IF YOU DON'T HAVE THAT,
 6 A COPY OF THAT ORDER, JOEL WILL GET ONE FOR YOU.
 7 THE DISCOVERY STYLE OF THIS MEDIATION
 8 HAS -- WHICH I SET AND WHICH JUDGE ROBRENO ALLOWED IN
 9 HIS ASSIGNMENT TO ME, IS PRECISE LANGUAGE THAT I COULD
 10 USE ANY OF THE TOOLS THAT THE FEDERAL RULES ALLOW ME TO
 11 USE AND TO SET UP THE MANAGEMENT OF THE MEDIATION
 12 PROCESS SATISFACTORY TO THE MEDIATOR. MY EDICT HAS BEEN
 13 THAT DISCOVERY WILL BEGIN BY INFORMAL METHOD. IF YOU
 14 WANT SOMETHING FROM SOMEBODY, PICK UP THE PHONE OR WRITE
 15 HIM A LETTER AND TALK WITH HIM ABOUT WHAT YOU THINK YOU
 16 NEED. AND THAT IS THE WAY YOU START. IF IT TURNS OUT
 17 THERE ARE SOME PROBLEMS, THEN DO GO TO THE LETTER
 18 WRITING BACK AND FORTH. IT'S SOMEWHAT INFORMAL.
 19 WE DON'T USE THE FORMAL DOCUMENTS EXCEPT
 20 SO FAR ONE VERY IMPORTANT DOCUMENT. IT'S AN AGREEMENT
 21 -- RESULTED IN AN AGREEMENT REACHED AMONG ALL THE
 22 PARTIES THAT THERE WILL BE A STANDARD SET OF
 23 INTERROGATORIES ADDRESSED TO PLAINTIFFS AND THE
 24 PLAINTIFFS IN ANSWERING THOSE INTERROGATORIES ARE ABLE
 25 TO PROTECT THEMSELVES FROM PERJURING THEMSELVES OR DOING

1 SOMETHING MISTAKEN BY THE LETTERS THAT WENT AROUND,
 2 THOSE INTERROGATORIES THAT ALLOW THEM TO INCORPORATE BY
 3 REFERENCE, FOR INSTANCE, THE MEDICAL REPORT INSTEAD OF
 4 ATTACHING IT, ALL SORTS OF THINGS THAT ARE DONE IN
 5 REGULAR LITIGATION. AND THEY CAN INCORPORATE BY -- THE
 6 PLAINTIFFS CAN INCORPORATE BY REFERENCE OTHER DOCUMENTS
 7 IN THE DOCUMENT REPOSITORY IN CHICAGO. IF YOU DON'T
 8 KNOW ABOUT THAT, YOU SHOULD GET A FORM. I CAN'T SPEND
 9 THE PRECIOUS TIME TODAY THAT I HAVE LEFT FOR ALL OF
 10 THIS. I DON'T WANT TO GO IN GREAT DETAIL OF THIS, BUT
 11 THERE'S A CONFIDENTIAL COMPUTERIZED DATABASE OF ALL OF
 12 THE CASES IN THE REPOSITORY. I HAVE NEVER -- WE PULLED
 13 A COUPLE OF ITEMS, BUT ONCE AGAIN, IT'S THE IKON
 14 DOCUMENT REPOSITORY MENTIONED IN THE PARAGRAPH E OF OUR
 15 AGENDA. IN THERE ARE MEDICAL RECORDS, WAGE RECORDS, ALL
 16 SORTS OF THINGS FROM THE PLAINTIFFS' LAWYERS' FILES
 17 WHICH CAN BE ACCESSED BY AUTHORIZED PEOPLE. AND THE
 18 PLAINTIFFS ARE ALLOWED TO INCORPORATE THINGS IN THAT
 19 REPOSITORY IN THEIR FILE IN ANSWER TO PARTICULAR
 20 INTERROGATORIES IF THAT INFORMATION IS IN THERE.
 21 I HAVE NOT SAID ANYTHING NEW TO ANYBODY
 22 EVEN THOUGH I NOTICE COUNSEL ARE WRITING CAREFULLY.
 23 EVERYTHING I HAVE SAID SO FAR IS ALL KNOWN TO EVERYBODY
 24 IN THE ROOM EXCEPT THE FOLKS THAT ARE HERE FOR THE FIRST
 25 TIME, ALTHOUGH THERE IS A CONFIDENTIALITY AGREEMENT THAT

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1 HAS TO BE EXECUTED TO GET AUTHORITY TO GO INTO THE
 2 REPOSITORY, AND WE HAVE ITEM E HERE WHICH WE MIGHT AS
 3 WELL TALK ABOUT, GET IT OVER WITH. I WILL ASK MR. MCCOY
 4 JUST BECAUSE I SEE HIM IN THE NUMBER ONE SEAT THERE,
 5 WHAT HAS HAPPENED TO THE CONFIDENTIALITY AGREEMENTS THAT
 6 WERE SIGNED? DO YOU KNOW WHERE THEY ARE LOCATED?
 7 MR. MCCOY: I DON'T KNOW THE ANSWER TO
 8 THAT, JUDGE. I NOTED THAT AS AN AGENDA -- IT'S AN
 9 AGENDA ITEM AND I THOUGHT THAT THOSE SHOULD BE FILED
 10 WITH THE COURT, NOT NECESSARILY AS YOU SAY WITH THE
 11 COURT CLERK, BUT I MEAN WITH YOUR HONOR AND THAT YOU
 12 SHOULD HAVE -- YOU SHOULD HAVE A RECORD. YOU SHOULD
 13 HAVE THOSE AND THEN THEY SHOULD BE DISTRIBUTED TO THE
 14 PARTIES. I KNOW IKON HAS A SET. I KNOW OUR OFFICE HAS
 15 QUITE A FEW, BUT I THINK IKON HAS SOME THAT WE DON'T
 16 HAVE AND I DON'T THINK YOUR HONOR HAS NECESSARILY BEEN
 17 PROVIDED COPIES.
 18 THE COURT: I DON'T HAVE THEM AT ALL. I
 19 DON'T REALLY NEED THEM. THE ONLY TIME I NEED THEM IS IF
 20 THERE WERE SOME PROBLEM OR DISPUTE OVER SOMETHING.
 21 MR. MCCOY: WELL, IN OUR THINKING --
 22 THE COURT: I WOULD RATHER HAVE SOMEBODY
 23 HOLD THEM, I WOULD THINK. IF IKON IS RESPONSIBLE, THEY
 24 MIGHT HOLD THEM, EXCEPT I HATE TO HAVE THE OFFICIAL
 25 RECORDS UNDERLYING A PART OF THIS CASE IN THE HANDS OF A

1 NONPARTY. THEY WOULD PROBABLY REFUSE ON THE GROUND THEY
 2 DON'T WANT TO GET INVOLVED ANYWAY.
 3 MR. MCCOY: THEY DEFINITELY GO BY THE
 4 CONFIDENTIALITY AGREEMENTS AT IKON. WE GET CALLS AT OUR
 5 FIRM SOMETIMES, IS IT OKAY TO PROVIDE MATERIALS TO THIS
 6 ATTORNEY? NOT JUST A FEW. THOSE ACTUALLY COME
 7 REGULARLY. AND THE QUESTIONS USUALLY ARE JUST ANSWERED
 8 BY THE CONFIDENTIALITY AGREEMENT. THEY EITHER SIGNED IT
 9 OR THEY DIDN'T, WHOEVER IS REQUESTING. SO WE ARE VERY
 10 CONCERNED THAT THERE BE A PLACE WHERE THESE ARE
 11 DEPOSITED INDEPENDENT OF THE -- OF OUR FIRM GETTING
 12 COPIES. AND I WOULD ASSUME AT A MINIMUM SOMEBODY IN THE
 13 DEFENSE LIAISON COMMITTEE SHOULD BE CHARGED WITH
 14 COLLECTING THAT IN CASE THERE IS AN ISSUE AS TO WHETHER
 15 ONE OF THESE PARTIES CALLING IS AUTHORIZED OR NOT.
 16 MR. EVERT: YOUR HONOR, I'M A LITTLE
 17 CONFUSED AS TO THE PROCEDURE. THERE WAS -- YOU ISSUED
 18 SOME MEDIATION RULES THAT HAD CONFIDENTIALITY PROVISIONS
 19 IN IT. THAT IS THE ONLY RECOLLECTION THAT I HAVE OF
 20 CONFIDENTIALITY IN THE PROCEEDINGS WHICH WE ARE ALL
 21 BOUND BY. IT DOES NOT HAVE A SIGNATURE LINE FOR US.
 22 JOEL AND I WERE TALKING BEFORE THE HEARING. JOEL HAD A
 23 RECOLLECTION THAT WE SIGNED THEM AT SOME POINT, BUT I
 24 DON'T REMEMBER THAT.
 25 THE COURT: I DON'T EITHER AS I SIT HERE.

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1 MR. EVERT: JOEL'S MEMORY I'M SURE IS
 2 BETTER THAN MINE BECAUSE THAT IS NOT A BIG THRESHOLD
 3 BUT I WONDER IF THE EASIEST THING TO DO, YOUR HONOR, IS
 4 FOR JOEL SIMPLY OR THE COURT TO RECIRCULATE YOUR
 5 AUGUST 27TH, 2009 MEDIATION RULES WHICH MAKE IT CLEAR
 6 THAT ALL OF THIS INFORMATION IS BOUND BY THIS
 7 CONFIDENTIALITY. AND THEN --
 8 THE COURT: THE DOCUMENT I'M THINKING OF
 9 IS SOME DOCUMENT THAT AUTHORIZES A PARTICULAR LAWYER OR
 10 LAW FIRM ACCESS TO THE IKON REPOSITORY. THERE MUST BE
 11 SOME KIND OF A -- I DIDN'T GET INVOLVED IN SETTING THAT
 12 UP. YOU ALL, THE PLAINTIFFS FIRM DID IT AND SHARED IT
 13 WITH THE DEFENSE AND CAME TO SOME AGREEMENT.
 14 MR. EVERT: THAT MAY WELL BE TRUE, YOUR
 15 HONOR. I SIMPLY DON'T RECALL THAT PARTICULAR DOCUMENT.
 16 SO MY SUGGESTION IS, IF IT'S OKAY WITH THE PLAINTIFFS,
 17 THAT WE SIMPLY RECIRCULATE YOUR ORDER, MAKE SURE
 18 EVERYBODY KNOWS THEY ARE BOUND BY IT AND THEN I THINK
 19 THAT SHOULD SOLVE THE PROBLEM.
 20 MR. RILEY: TO THE EXTENT WE HAVE A
 21 PROBLEM OR AN ISSUE RELATING TO IKON, SIMPLY INSTRUCTING
 22 IKON THAT ONLY COUNSEL OF RECORD HAVE ACCESS AND GIVING
 23 THEM A LIST OF THE COUNSEL OF RECORD SHOULD SOLVE THE
 24 PROBLEM.
 25 THE COURT: I WOULD THINK SO. THE SOURCE

1 OF ALL OF THE INFORMATION IN THERE IS THE PLAINTIFF.
 2 IT'S PLAINTIFF'S STUFF THAT THE PLAINTIFF HAS PUT IN
 3 THIS PLACE FOR READY ACCESS SO THEY DON'T GET BOMBBARDED
 4 EVERY DAY IN EVERY WAY ASKING FOR RECORDS ALL THE TIME.
 5 THE DEFENSE AND OTHERS WOULD HAVE ACCESS TO THEM.

6 MR. MCCOY: THAT IS TRUE, JUDGE. BUT
 7 WE -- GIVEN THE NUMBER OF DEFENDANTS NOW THAT HAVE
 8 ENTERED INTO THIS MEDIATION, WE BELIEVE THAT THERE
 9 SHOULD BE JUST A RECORD OF SIGNATURE FOR EACH OF THESE
 10 DEFENDANTS ON THE BOTTOM OF THIS ORDER. THAT WOULD
 11 PROBABLY BE THE EASIEST WAY RATHER THAN WHAT THE SYSTEM
 12 IS NOW. IT SEEMS LIKE E-MAILS OR LETTERS STATING WE
 13 AGREE TO BE BOUND. THAT IS WHAT I HAVE SEEN BUT I WOULD
 14 THINK JUST EVERYBODY SIGNS THIS AND THEN IKON CAN HAVE
 15 THAT DOCUMENT TO KNOW THAT THAT IS AN AUTHORIZED USER
 16 AND THAT WOULD ELIMINATE THE PROBLEMS DOWN THE ROAD.

17 THE COURT: MR. RILEY.

18 MR. RILEY: IF WE GET BOUND UP WITH THE
 19 IDEA THAT WE HAVE TO SIGN AND AGREE WE ARE GOING TO BE
 20 BOUND BY THE COURT'S ORDERS, THAT SEEMS TO ME UNUSUAL
 21 AND CUMBERSOME.

22 THE COURT: I WAS ABOUT TO REACH THE SAME
 23 CONCLUSION. THERE IS AN EASIER WAY TO DO IT. YOU ARE
 24 ALL BOUND BY THE CONFIDENTIALITY ORDER. I USE ANOTHER
 25 DEVICE CALLED A LETTER ORDER AND THEY ARE THE SAME.

18

1 COUNSEL KNOW THAT THERE ARE JUDGES ACROSS THE COUNTRY
 2 THAT USE LETTER ORDERS ROUTINELY AS PART OF THEIR STYLE
 3 OF CONDUCTING THEIR CHAMBERS. I DON'T DO THAT BUT A
 4 LETTER ORDER IS AN ORDER OF THE COURT. WE ARE JUST NOT
 5 FILING IT AND OFTEN IT DOES NOT HAVE ALL THE BELLS AND
 6 WHISTLES THAT AN ORDER HAS. SO EVERYONE IS BOUND BY THE
 7 ORDER. I'M GOING TO HAVE THE PLAINTIFFS OFFICE DEVISE
 8 AND SUBMIT TO ME WITHIN THE NEXT TWO WEEKS, WE'LL COME
 9 UP WITH A DATE FOR THAT, A SYSTEM WHEREBY AUTHORIZATION
 10 WOULD BE GRANTED TO THE COUNSEL OF RECORD IN THIS CASE
 11 SO THEIR PARALEGALS AND SUPPORT STAFF ET CETERA HAVE
 12 AUTHORITY OF THE PLAINTIFFS TO HAVE ACCESS TO THE IKON
 13 REPOSITORY. THAT AUTHORIZATION I THINK SHOULD
 14 ORIGINALLY BE INITIALLY A SINGLE DOCUMENT AND THEN WHEN
 15 THEY ARE ALL COLLECTED, YOU CAN MAKE A LIST OF THEM. I
 16 DON'T HAVE TO SEE IT. JUST GIVE IT TO IKON AND SAY
 17 THESE ARE THE PEOPLE. I'M ASKING THE PLAINTIFF TO TAKE
 18 ON THAT RESPONSIBILITY BECAUSE IT'S THE PLAINTIFFS'
 19 MATERIAL AND THAT IS NOT A VERY COMPLICATED --

20 MR. MCCOY: WE WILL DO THAT, JUDGE. SO
 21 WHAT YOU ARE ASKING US TO DO IS TO SUBMIT A DRAFT ORDER
 22 OR LETTER TYPE OF ORDER.

23 THE COURT: PARDON ME.

24 MR. MCCOY: YOU ARE ASKING US TO SUBMIT
 25 LIKE A DRAFT ORDER OR A DRAFT LETTER?

1 THE COURT: SURE.

2 THEN IF I THINK THERE IS ANY PROBLEM
 3 WITH IT, I WILL CALL YOU. WE WILL GO OVER THE PROBLEM.
 4 IF THEY ARE ADMINISTERIAL I WON'T BOTHER THE DEFENSE
 5 PEOPLE UNTIL IT IS ALL DONE. IN THE MEANTIME, IF THE
 6 SO-CALLED NEWCOMERS IN THE PROCEEDING WANT TO GET AT
 7 THEIR -- I SEE MANY OF YOU HAVE ONLY A FEW CASES. YOU
 8 MAY WANT TO FIND OUT WHAT THEY ARE ABOUT. YOU CAN GO TO
 9 THE IKON REPOSITORY AND GET THE MEDICAL REPORTS AND WAGE
 10 INFORMATION AND SOME OF THE -- WHATEVER IS COLLECTED
 11 THERE. THEY VARY IN DEPTH OF ITEMS IN THERE FROM VERY
 12 FEW TO A LOT. AND I WOULD CALL PLAINTIFFS, GET A HOLD
 13 OF PLAINTIFFS COUNSEL IN THE MEANTIME BEFORE THE SYSTEM
 14 GETS ON TRACK AND FIND OUT HOW TO GET AT THAT. THEY CAN
 15 WRITE TO IKON AND GIVE YOU INTERIM AUTHORITY, AS FAR AS
 16 I'M CONCERNED, WHATEVER THE LANGUAGE IS IN ITEM E.

17 THERE IS ONE MORE THING BEFORE WE PASS
 18 ALONG TO SOMETHING ELSE. THOSE OF YOU WHO HAVE ACCESSED
 19 THE IKON REPOSITORY, HAVE YOU HAD ANY PROBLEMS, EITHER
 20 AUTHORITY OR INEFFICIENCY OR SOMETHING THAT WE OUGHT TO
 21 BE CONCERNED ABOUT?

22 MR. YOUNG: YOUR HONOR, MY NAME IS LANE
 23 YOUNG. I'M NATIONAL COUNSEL. WHEN THIS PROCESS STARTED
 24 YOUR HONOR HAD INVITED NATIONAL COUNSEL TO TAKE PART IN
 25 IT AND CASCINO VAUGHAN GOT IN TOUCH WITH ME. AND I HAD

20

1 TALKED TO YOUR CLERK OR OUR OFFICE HAD. SINCE WE ARE
 2 NOT -- WE WERE NOT COUNSEL OF RECORD WHEN THE CASES WERE
 3 ORIGINALLY ANSWERED, BUT I AM ULTIMATELY IN CHARGE, WE
 4 ARE NOT ABLE TO GET THINGS FROM IKON. I WOULD
 5 APPRECIATE IT IF YOUR HONOR COULD ADDRESS -- I HAVE
 6 TAKEN PART IN THESE PROCEEDINGS SINCE THE BEGINNING BUT
 7 I'M NOT QUOTE COUNSEL OF RECORD. I'M FROM ATLANTA AND
 8 THAT IS -- IT HAS BEEN A PROBLEM. I TRIED TO GET THE
 9 INTERROGATORY ANSWERS IN ORDER TO PREPARE FOR THIS
 10 HEARING AND WE WERE PRECLUDED FROM DOING SO BECAUSE WE
 11 ARE NOT QUOTE COUNSEL OF RECORD.

12 THE COURT: DO YOU HAVE COUNSEL OF RECORD
 13 AS YOUR CLIENT?

14 MR. YOUNG: YES, WE DO. IT'S A LONG
 15 STORY.

16 THE COURT: I DON'T NEED THE STORY, BUT
 17 IF YOU HAVE THEM OF RECORD, WHY DOESN'T COUNSEL OF
 18 RECORD WHO REPORTS TO YOU GO GET THEM?

19 MR. YOUNG: I CAN DO THAT, JUDGE. I JUST
 20 THINK IT WOULD BE SIMPLER IF IT WOULD BE POSSIBLE TO
 21 INCLUDE NATIONAL COUNSEL AS FOLKS WHO COULD GET STUFF
 22 DIRECTLY FROM IKON. I DON'T WANT TO UPSET THE APPLE
 23 CART.

24 THE COURT: WHEN THE PROCEDURE WHICH
 25 CAN'T BE VERY COMPLICATED IS FINISHED, YOU CAN INFORM

1 THE PLAINTIFFS THAT YOU HAVE A LAWYER THAT WANTS TO HAVE
2 ACCESS AND GET THEIR PERMISSION IN WHATEVER FORM YOU
3 WANT.

4 MR. YOUNG: YES, THAT WILL BE GREAT.

5 THE COURT: YOU WON'T HAVE ANY TROUBLE
6 WITH THE PLAINTIFF'S OFFICE IN DOING THAT.

7 MR. YOUNG: I HAVE BEEN DEALING WITH THEM
8 ON A FAIRLY REGULAR BASIS. WE SEEM TO GET ALONG FINE.
9 SOME OF THE LAWYERS THAT ORIGINALLY ANSWERED THESE
10 CASES, JUDGE, QUITE FRANKLY THAT -- WE'VE GOT NEW LAW
11 FIRMS, LOCAL COUNSEL, THEY PASSED AWAY. I MEAN, IT'S
12 JUST -- IT WOULD BE EASIER IF WE COULD HAVE ACCESS TO
13 THE MATERIALS OURSELVES.

14 MR. MCCOY: JUDGE, IF -- AND EVERYBODY
15 WHO NEEDS ACCESS TO THE MATERIALS TO HELP FACILITATE
16 THIS, SHOULD HAVE ACCESS. THAT IS CERTAINLY HOW WE VIEW
17 IT. IT SHOULD BE SIMPLE, BUT IF NATIONAL COUNSEL WHO'S
18 NOT OF RECORD IN THESE CASES IS GOING TO BE USING THESE
19 DOCUMENTS, WHICH I'M SURE IS PROBABLY A COMMONPLACE
20 SITUATION, THEN YOUR HONOR'S ORDERS SHOULD BE APPLICABLE
21 TO NATIONAL COUNSEL AS WELL AS THE COUNSEL OF RECORD.

22 THE COURT: THE CONFIDENTIALITY ORDER,
23 FOR INSTANCE?

24 MR. MCCOY: YES.

25 THE COURT: THAT IS A GOOD POINT.

22

1 MR. MCCOY: WE WILL PUT THAT IN OUR
2 DRAFT.

3 THE COURT: MR. YOUNG, DO YOU HAVE ANY
4 PROBLEM WITH THAT?

5 MR. YOUNG: NO, YOUR HONOR. WE ARE --
6 ABSOLUTELY, WE HAVE AGREED TO THAT SINCE DAY ONE. SO I
7 ASSUMED THAT WE WERE BOUND BY THAT.

8 THE COURT: THANK YOU.

9 ONE THING THAT I DID NOT COVER, THE STYLE
10 OF THIS MATTER THAT I'M ABOUT TO DISCUSS SEEMS TO BE A
11 PLACE WHERE I END THE PRELIMINARY WELCOMING REMARKS TO
12 NEW PARTIES. THE NEWLY INVOLVED DEFENDANTS DECIDED THEY
13 DID NOT WANT TO PARTICIPATE IN THE MEDIATION. THAT
14 OFFER HAS BEEN WITHDRAWN BY THE MEDIATOR AND YOU ARE IN
15 THE MEDIATION. AS I SAID, I WOULD LIKE TO BE
16 CONCILIATORY AND EXTRA CIVIL AND THAT IS WHY I MADE IT
17 AN INVITATION. I DON'T SEE HOW IT COULD BE OTHERWISE.

18 WE HAVE TWO ORDERS WITH HUNDREDS OF --
19 ALMOST CLOSE TO 5,000 CASES IN THOSE TWO ORDERS. IF
20 YOUR CASES ARE IN THERE, THE ORDER HAS BEEN ISSUED. I
21 DID NOT ISSUE THE ORDER. YOU ARE ORDERED TO MEDIATION.
22 FEDERAL RULES REQUIRE ALTERNATIVE DISPUTE RESOLUTION
23 TECHNIQUES TO BE UTILIZED BY THE COURT IN SETTLING
24 CASES. AND SO ONCE AGAIN, WELCOME, AND IF YOU NEED TO
25 GET UP-TO-DATE, WE HAVE A FOUR-PERSON LIAISON COMMITTEE

1 THAT YOU NO DOUBT LEARNED ABOUT AND THEY ARE VERY GOOD
2 AND THEY CAREFULLY POINT OUT TO ME FROM TIME-TO-TIME
3 THAT THE ITEM, PARTICULAR ITEM ON WHICH THEY ARE
4 RESPONDING IS OR IS NOT ON BEHALF OF ALL DEFENDANTS. IF
5 IT'S NOT, IT'S VERY CLEAR AND WE HAVE TO DEAL WITH THAT
6 WHEN THAT HAPPENS. OKAY.

7 NOW THAT WE HAVE GOTTEN INTRODUCTORY
8 MATERIAL ON THE BOOKS, SO-TO-SPEAK, A COUPLE OF OTHER
9 HOUSEKEEPING MATTERS. IF YOU WANT A COPY OF THE
10 TRANSCRIPT OF THESE PROCEEDINGS YOU APPLY IN THE USUAL
11 WAY TO THE COURT AND YOU WILL GET THEM. THEY ARE PUT
12 UNDER SEAL BUT YOU CAN GET THEM IF YOU QUALIFY FOR --
13 THE SEALING ORDER TELLS US WHO IS QUALIFIED. YOU HAVE
14 TO ORDER THE NOTES IN THE USUAL WAY. I'M GOING TO ORDER
15 THEM EXPEDITED BECAUSE THERE ARE JUST TOO MANY PEOPLE
16 THAT NEED BACKUP. MAYBE THEY HAVE TO SHOW IT TO AN
17 IN-HOUSE COUNSEL WHO WON'T BELIEVE WHAT JUDGE REED SAID
18 AT THAT MEETING IN PHILADELPHIA SO YOU CAN JUST SHOW IT
19 TO THEM.

20 I USUALLY HAVE A RECESS FOR ABOUT AN HOUR
21 IN THE MIDDLE OF THE DAY AT SOME POINT WHERE WE ARE AT
22 SOME KIND OF OBVIOUS BREAK THAT WE ARE GOING TO MOVE ON
23 TO ANOTHER SUBJECT OR SOMETHING LIKE THAT. WHAT ARE WE
24 GOING TO DO ABOUT THE WEATHER THIS EVENING? I HAVE NO
25 IDEA WHAT IT'S GOING TO BE LIKE. WE WERE TOLD LATE

24

1 YESTERDAY EVENING THAT IT WOULD BE RAIN AND NO
2 ACCUMULATION EARLY IN THE MORNING, ACCUMULATION WOULD
3 START IN THE EVENING TODAY. SO THAT DID NOT HAPPEN. WE
4 HAD COUPLE OF INCHES OF SLUSH ALL OVER THE PLACE IN A
5 CITY THAT HAS A MODEST NUMBER OF SNOW STORMS DURING THE
6 YEAR THAT CAUSES ALL THE TROUBLE THAT CAUGHT ME. BUT WE
7 WILL HAVE A RECESS IN THE MIDDLE OF THE DAY.

8 BECAUSE OF THE DELAY IN STARTING, AND
9 BECAUSE SOME OF YOU ARE REPRESENTING DEFENDANTS THAT
10 ONLY RECENTLY HAVE BEEN BROUGHT INTO THE MEDIATION, I
11 HOPE MY NOT BEING HERE ALLOWED YOU TO TALK TO PLAINTIFFS
12 COUNSEL OR DEFENSE COUNSEL TO GET INFORMATION THAT YOU
13 MIGHT NEED FROM THEM. I URGE YOU TO DO THAT OVER THE
14 MIDDAY RECESS AS WELL SO THAT SOME OF YOU WHO MIGHT
15 INCLUDE VETERANS OF THIS ODYSSEY ARE WORRIED ABOUT
16 WEATHER CLOSING IN AIRPORTS THIS EVENING ARE GOING TO
17 HAVE TO DO WHATEVER YOU HAVE TO DO. I DON'T KNOW WHAT
18 IS GOING TO HAPPEN. THE FACT THAT YOU KNOW BETTER THAN
19 I, IF YOU HAVE A CONFIRMED RESERVATION ON AN AIRPLANE
20 THAT IS SUPPOSED TO LEAVE PHILADELPHIA THIS EVENING IT
21 MAY OR MAY NOT LEAVE PHILADELPHIA THIS EVENING. NOBODY
22 KNOWS WHETHER IT WILL.

23 MR. SPINELLI: WOULD YOU CONSIDER SETTING
24 AN ENDING TIME AND HAVE A GOAL THAT WE WOULD WORK
25 TOWARDS.

1 THE COURT: PROBABLY SHOULD. I
 2 RECOGNIZED BY THE TIME I GOT ON PAPER FOR THIS AGENDA
 3 THAT WE WOULD NEVER FINISH THIS WHOLE AGENDA TODAY. BUT
 4 WE DON'T HAVE TO TAKE THINGS IN ANY PARTICULAR ORDER,
 5 EXCEPT THE FIRST PARAGRAPH THAT WE HAD TO GET THE NEW
 6 INVITEES, THE FOLKS THAT HAVE BEEN ORDERED IN, UP TO
 7 SPEED. I DON'T KNOW WHAT THE CURRENT WEATHER
 8 INFORMATION IS. I DON'T RELY ON IT VERY MUCH, BUT I
 9 THINK THEY DON'T EXPECT THE ACCUMULATION TO BEGIN UNTIL
 10 LATER IN THE EVENING.
 11 MR. SPINELLI: THAT IS AFTER THE ICE
 12 MELTS, JUDGE.
 13 THE COURT: THAT IS WHAT I RODE IN ON
 14 THIS MORNING.
 15 MR. SPINELLI: HOW ABOUT 3:30?
 16 MR. CASCINO: HONESTLY, 3:30 IS FINE WITH
 17 US, BUT EVERYONE WILL BE SNOWED IN BECAUSE MY
 18 UNDERSTANDING IS THAT 4 O'CLOCK TODAY THERE IS GOING TO
 19 BE 100 PERCENT CHANCE OF PRECIPITATION ACCORDING TO WHAT
 20 WE SAW ON THE COMPUTER ABOUT A HALF-HOUR AGO, BUT I
 21 DON'T CARE.
 22 MR. RILEY: I CAN TELL YOUR HONOR THAT I
 23 WAS ON A FLIGHT AT 7:30 THIS EVENING THAT WAS CANCELLED
 24 AT 10:30 LAST NIGHT. I AM ON A FLIGHT AT 4:25 THIS
 25 AFTERNOON, WHICH -- THEY PEREMPTORILY CANCELLED THE

1 EVENING FLIGHTS BECAUSE THE WEATHER IS SUPPOSED TO BE
 2 BAD IN THE EVENING. SO I'M STILL ALIVE IN TERMS OF A
 3 4:25 FLIGHT, BUT IT WILL BE THE LAST ONE GOING OUT
 4 TODAY.
 5 THE COURT: ON SO-CALLED BUSINESS FLIGHTS
 6 YOU HAVE TO BE THERE AN HOUR AND-A-HALF AHEAD OF TIME?
 7 MR. RILEY: NO, I DON'T, AND I SUSPECT
 8 THAT ONE MIGHT SLIDE A LITTLE BIT IN TERMS OF ITS
 9 DEPARTURE, BUT IF WE COULD ADJOURN AT 3 O'CLOCK I WOULD
 10 HAVE A FIGHTING CHANCE.
 11 THE COURT: EVEN THOUGH WE HAD A LATE
 12 START. THERE IS A COUPLE OF THINGS LIMITING HOW MUCH WE
 13 CAN GET DONE. SOME OF THESE THINGS ON THE AGENDA CAN BE
 14 HANDLED OTHER WAYS. IT'S JUST THAT IF WE ARE HAVING A
 15 MEETING WE MAY AS WELL PUT THIS STUFF DOWN THAT MIGHT
 16 EXPEDITE IT. OTHERWISE YOU HAVE A LOT OF CORRESPONDENCE
 17 BACK AND FORTH.
 18 MR. EVERT: I THINK IF WE DID WHAT MR.
 19 RILEY SUGGESTED, TARGET 3 O'CLOCK, THERE ARE A LOT OF
 20 ITEMS ON THAT AGENDA WITH THAT AS INCENTIVE WE CAN MOVE
 21 THROUGH VERY RAPIDLY.
 22 THE COURT: LET'S MAKE IT WE WILL SHOOT
 23 FOR 3 O'CLOCK. AND IF WE ARE NOT QUITE FINISHED FOR THE
 24 NIGHT WE MIGHT SPEND A LITTLE TIME AFTER THAT BUT NO
 25 LATER THAN 3:30, BUT THE PLAN IS TO ADJOURN AT

1 3 O'CLOCK.
 2 MR. EVERT: THANK YOU, YOUR HONOR.
 3 THE COURT: PLAN IS TO ADJOURN AT 3
 4 O'CLOCK, NOT ADJOURN IN A CLASSIC SENSE FOR TODAY'S
 5 PURPOSES. WE WILL PROBABLY HAVE A RECESS A 12:30
 6 ASSUMING WE ARE NOT IN THE MIDDLE OF HEATED OR
 7 CONCILIATORY ARGUMENT.
 8 FOR THE PLAINTIFFS' SIDE, WOULD YOU LOOK
 9 AT ITEM NUMBER -- I'M GOING TO JUST START AT THE TOP AND
 10 KEEP MOVING DOWN. IF SOMEBODY FINDS SOMETHING THAT IS
 11 REALLY BOTHERING YOU AND WE ARE GETTING CLOSE TO
 12 3 O'CLOCK OR YOU WANT TO GET IT DEFINITELY FINISHED UP,
 13 THEN TALK TO THE OTHER SIDE OVER THE NOON HOUR AND BACK
 14 TO ME. WE WILL RECONVENE AND TELL ME YOU HAVE ONE THAT
 15 IS LEFT THAT WE REALLY NEED TO GET DONE TODAY, SOMEBODY
 16 WANTS TO DO THAT. OTHERWISE I'M JUST GOING TO GO DOWN.
 17 MR. SPINELLI: JUDGE, WOULD YOU CONSIDER
 18 GOING OUT OF ORDER BECAUSE I THINK MR. EVERT IS CORRECT
 19 THAT WE CAN PROBABLY WORK OUT SOME OF THESE -- I THINK
 20 ALMOST ALL OR A LOT OF PAGE ONE. I THINK THERE IS A LOT
 21 OF THOUGHT THAT NUMBER 8, THE PLANNING FOR THE ACTUAL
 22 MEDIATION PROCEDURES, MIGHT BE A GOOD PLACE TO START AND
 23 IN THE MEANTIME WE WILL TRY TO WORK OUT SOME OF THE
 24 ADMINISTRATIVE.
 25 THE COURT: THAT IS GOING TO TAKE LONGER

1 THAN WE HAVE UNTIL 3 O'CLOCK.
 2 MR. SPINELLI: REALLY.
 3 THE COURT: I DON'T KNOW. A LOT --
 4 SEVERAL OF THESE AGENDA ITEMS FOR ME, I DON'T KNOW THE
 5 ANSWERS TO THESE QUESTIONS BECAUSE YOU ARE ALL IN THE
 6 MIDDLE OF THE FRAY AND I'M NOT ON A DAILY BASIS OF
 7 KNOWING WHAT IS GOING ON.
 8 MR. MCCOY: JUDGE, FROM PLAINTIFFS' END
 9 WE WOULD JUST LIKE PRETTY MUCH PROCEED AS THE AGENDA IS
 10 LISTED AT LEAST CERTAINLY ON THE NEXT ITEM SO WE CAN
 11 UPDATE YOU AS TO WHAT HAS BEEN GOING ON. THAT IS
 12 IMPORTANT AND EVERYBODY ELSE --
 13 THE COURT: MY FIRST CALL IS FOR ROMAN
 14 NUMERAL II ON THE PLAINTIFFS SIDE TO GIVE A REPORT.
 15 MR. MCCOY: ROMAN NUMERAL II A, SHOULD WE
 16 GO AHEAD AND START ON THAT.
 17 THE COURT: SURE.
 18 MR. MCCOY: ON II A, JUDGE, THE
 19 PLAINTIFFS HAVE SENT OVER APPROXIMATELY 600
 20 INTERROGATORY RESPONSES TO IKON ALONG WITH THE PREVIOUS
 21 SUBMISSIONS OF MEDICAL RECORDS AND OTHER THINGS THAT HAD
 22 ALREADY BEEN THERE BECAUSE OF THEY WERE PART OF AO 12 OR
 23 WHATEVER. AND IN ADDITION WE ARE PROVIDING MORE EVERY
 24 WEEK. THERE HAS BEEN, ON SOME OF THESE, A PROCESSING
 25 ERROR WHERE WE ARE GOING TO HAVE TO CORRECT SOME OF THE

1 ANSWERS AND WE ARE IN THE PROCESS OF DOING THAT BECAUSE
2 OF WHAT WAS PUT IN. YOU KNOW, THESE WERE PROCESSED ON A
3 WORD PROCESSING TYPE OF PROGRAM. WHAT WAS PUT IN AS A
4 DEFAULT ON SOME OF THEM WAS -- WE FOUND OUT LAST COUPLE
5 OF DAYS WAS AN ERROR. THAT BATCH IS BEING CORRECTED SO
6 WE ARE GOING TO TAKE CARE OF THAT. WE WILL BE ADVISING
7 EVERYONE AS WE SUBMIT THE CORRECTED VERSIONS.

8 THE COURT: LET ME INTERRUPT YOU FOR JUST
9 A MINUTE FOR EVERYBODY'S BENEFIT. WHAT WE ARE TRYING TO
10 DO IS EXCHANGE ENOUGH INFORMATION SO THAT THE CLIENTS
11 WILL HAVE THE ADEQUATE FOUNDATION FOR MAKING RESPONSIBLE
12 DECISIONS. WE USE AN INFORMAL METHOD OF EXCHANGING
13 INFORMATION, BUT IT IS IMPORTANT THAT MISTAKES OR
14 UPDATES IN ANSWERS TO INTERROGATORIES, EVEN THOUGH THAT
15 IS A FORMAL RULE, IF YOU DON'T UPDATE THEM AND WALK INTO
16 MEDIATION WITH A WHOLE BUNCH OF THIS STUFF, WHERE ARE
17 YOU GOING TO GO. PLAINTIFFS ARE DOING IT NOT BECAUSE I
18 HAVE ASKED THEM TO BUT BECAUSE IT MAKES A LOT OF SENSE.
19 I DON'T HAVE TO TELL YOU THAT IF THERE IS NOT ADEQUATE
20 INFORMATION PEOPLE ARE NOT GOING TO MAKE DECISIONS.

21 MR. MCCOY: JUDGE, WHAT I WOULD LIKE TO
22 DO IS, WE BROUGHT THIS COMPUTER SCREEN HERE TO TRY TO
23 MAKE THINGS GO FASTER. I WANT TO SHOW YOU NOW SOME
24 ADDITIONAL INFORMATION THAT WE ARE PROVIDING AS PART OF
25 OUR DISCOVERY RESPONSES BECAUSE THIS, I THINK, IS GOING

30

1 TO BE VERY PERTINENT INFORMATION THAT WE HAVE DEVELOPED.
2 LET'S GO AHEAD AND PUT IT ON OUR COMPUTER.

3 THE COURT: I DON'T KNOW WHAT IT IS.
4 COULD YOU EXPLAIN IT.

5 MR. MCCOY: IT'S BEST -- YOU WILL SEE IT
6 ON THE SCREEN HERE, BUT WHAT WE ARE SHOWING YOU IS JOB
7 SITE MEMORANDAS THAT HAVE THE OTHER -- THAT OUR FIRM HAS
8 ASSEMBLED. WE HAVE SPENT A LOT OF TIME ON THIS,
9 ASSEMBLING EVIDENCE BASED UPON KEY JOB SITES THAT HAVE A
10 LOT OF CLIENTS INVOLVED WITH THESE JOB SITES TO
11 FACILITATE BASED ON LARGER GROUPS OF CASES, THE
12 UNDERSTANDING OF EVERYONE OF WHAT THE EVIDENCE IS
13 AGAINST WHOM. WHAT WE HAD DONE IS OUR ATTORNEYS AND
14 LEGAL ASSISTANTS, I WOULD SAY PROBABLY 12 TO 15 PEOPLE
15 EVERY DAY FOR A LOT OF THEIR TIME EVERY DAY HAVE BEEN
16 WORKING TO PUT TOGETHER THIS EVIDENCE. AND I'M GOING TO
17 SHOW BRIEFLY THE PRODUCT OF THAT. THIS INFORMATION IS
18 BEING PROVIDED TO THE REPOSITORY AND WE ARE -- WE
19 PROVIDED I BELIEVE EIGHT JOB SITE MEMOS RECENTLY AND
20 THERE IS GOING TO BE PROBABLY UP TO AT LEAST MAYBE 50.
21 BUT'S LET GO AHEAD.

22 I THINK THE BEST EXAMPLE, WE WILL START
23 WITH HENNEPIN AS A EXAMPLE, BEING A POWER PLANT IN
24 CENTRAL ILLINOIS. THIS IS WHAT -- CAN YOUR HONOR SEE
25 THAT OKAY?

1 THE COURT: SURE.

2 MR. MCCOY: THIS IS THE HENNEPIN JOB SITE
3 MEMORANDUM PREPARED BY OUR OFFICES. THIS IS THE DATE.
4 IT WILL BE SUPPLEMENTED AS ADDITIONAL INFORMATION COMES
5 IN. THIS IS AN EXAMPLE WHERE SOME MORE INFORMATION IS
6 COMING IN ON THESE NONPARTY SUBPOENAS. BY THE WAY, ON
7 NONPARTY SUBPOENAS, JUDGE, THE 30 THAT WERE SENT OUT,
8 ABOUT 25 HAVE AGREED TO PRODUCE DOCUMENTS OR ARE IN THE
9 PROCESS OF NEGOTIATING THE PRODUCTION OF THE DOCUMENTS
10 WITH US SO THAT HAS WORKED AND ADDED TO THE OTHERS QUITE
11 A BIT. AT THIS JOB SITE WE HAVE 28 CLIENTS WHO WORKED
12 AT THAT JOB SITE. THIS IS A LISTING OF THE NUMBER OF
13 CASES FOR EACH DEFENDANT THAT WE HAVE IN OUR RECORDS.
14 GO AHEAD, MOVE THAT UP, ROB. SO WE HAVE 25
15 WESTINGHOUSE, AS AN EXAMPLE, CLIENTS IN THERE. THEN WE
16 HAVE 14 DEFENDANTS IN THREE OR FEWER CASES. DISEASE
17 CATEGORIES INVOLVED AT THIS JOB SITE, WE HAVE TWO LUNG
18 CANCERS WITH UNDERLYING ASBESTOS DISEASE, THREE NONLUNG
19 CANCERS WITH UNDERLYING ASBESTOS DISEASE, ONE SEVERE
20 ASBESTOSIS CASE. SO AGAIN THESE WOULD BE THE
21 SIGNIFICANT INJURY CASES THAT ARE IN THAT GROUP. WE
22 WENT THROUGH OUR DOCUMENTS AT OUR FIRM AND WE LISTED
23 BELOW SOME OF THE CONTENTS, NOT ALL OF IT, BUT PEOPLE
24 CAN REQUEST THESE, JUDGE. FROM IKON, OR THROUGH IKON.
25 SOME OF THEM ARE ALREADY IN ELECTRONIC FORMAT. WE HAVE

32

1 LIKE A BOX, BOX NUMBER 84 AT OUR OFFICE SO WE KNOW WHERE
2 THEY CAME FROM.

3 WHAT THIS SHOWS, GO BACK UP, ROB, FOR A
4 SECOND. WE HAVE 25 WESTINGHOUSE CLIENTS. NOW WHAT IS
5 WESTINGHOUSE'S RESPONSIBILITY FOR -- WHAT IS OUR BASIS
6 AT THIS JOB SITE. GO BACK DOWN HERE. HERE IS AN
7 EXAMPLE RIGHT HERE ON WESTINGHOUSE IN THIS BOX, 84,
8 THERE ARE SIX CONTRACTS TALLING \$557,000 OF WORK ON
9 UNIT 1, SIX CONTRACTS FOR 468,000 FOR THE BOILER ROOM
10 ELEVATOR TRANSPORTERS, MOTOR CONTROL SWITCH GEAR AND
11 CARRIER CURRENT EQUIPMENT. THE IDEA OF THIS IS THAT
12 THIS IS EQUIPMENT THAT WOULD HAVE ASBESTOS CONTAINING
13 PRODUCTS INVOLVED WITH IT, WOULD NEED SERVICE WORK. GO
14 DOWN, ROB.

15 AND THEN WE HAVE GOT SOME INFORMATION
16 FROM DATABASES THAT WERE PUBLISHED BY OUTSIDE RELIABLE
17 SOURCES, ONE OF THEM BEING THE PLATTS POWER PLANT
18 DATABASE, IT'S LIKE A WORLDWIDE TYPE OF PUBLICATION USED
19 BY THE POWER INDUSTRY. THIS SHOWS THERE WAS A GE
20 TURBINE AND GENERATOR IN '53 AND '59. AGAIN, THAT
21 RELATES TO EVIDENCE AGAINST GE AT THIS JOB SITE. WE
22 LISTED SPECIFICALLY ONE OF OUR CLIENTS THAT WE'VE TALKED
23 TO AS PART OF THIS PROCESS WHO HAS A LOT OF KNOWLEDGE
24 ABOUT THIS JOB SITE. THERE IS OBVIOUSLY MORE CLIENTS
25 AND THERE IS MORE DOCUMENTS, BUT THIS WAS A BRIEF

1 INTRODUCTORY MEMO TO HELP FACILITATE RESOLUTION AT THIS
 2 JOB SITE. SO WE GO ON TO A COUPLE OTHER EXAMPLES.
 3 MR. RILEY: MAY I ASK A QUESTION ABOUT
 4 THAT -- THOSE KINDS OF SUMMARIES?
 5 THE COURT: MAYBE WE WILL FIND OUT. I
 6 DIDN'T KNOW THE SUMMARY WAS GOING TO BE PRESENTED OTHER
 7 THAN ON THE SCREEN.
 8 MR. RILEY: WE RECEIVED A COPY OF A
 9 COUPLE OF THESE.
 10 THE COURT: I HAVE NOT SEEN THEM.
 11 MR. RILEY: AND THE CONCERN I GUESS I
 12 HAVE IS, IT'S CERTAINLY HELPFUL TO HAVE THE PLAINTIFF
 13 TRYING TO ASSEMBLE THIS INFORMATION. BUT AS LONG AS IT
 14 IS PRESENTED IN AGGREGATE FASHION IN THE WAY THE
 15 SUMMARIES DO, IT'S PRETTY MUCH USELESS FROM A
 16 DEFENDANT'S STANDPOINT IN THAT IT DOES NOT IDENTIFY, BY
 17 EACH DEFENDANT, WHO THE PLAINTIFFS ARE THAT THEY SAY ADD
 18 UP TO 25 OR 15 OR WHATEVER. AND IT DOES NOT IDENTIFY IN
 19 THOSE INSTANCES WHAT THE DISEASES ALLEGED ARE. SO ONE
 20 OF THE SHORTCOMINGS FROM OUR PERSPECTIVE IN TERMS OF
 21 USING IT IN THE MEDIATION IS THAT IT'S NOT -- IT DOES
 22 NOT TELL US WHAT WE WANT TO KNOW ABOUT SPECIFIC
 23 PLAINTIFFS AND THEIR CLAIMS AGAINST SPECIFIC DEFENDANTS.
 24 MR. SPINELLI: JUDGE, JUST TO GO ONE MORE
 25 STEP AND I DON'T KNOW IF THIS IS THE INTENTION OF

34

1 PLAINTIFFS OR NOT, BUT SOME TYPE OF A MEDICAL BACKUP,
 2 SUCH AS X-RAYS OR DIAGNOSING REPORTS, IS THAT -- BOB, IS
 3 THAT SOMETHING THAT YOU PLAN TO MAKE PART OF THIS?
 4 THE COURT: IT'S ALREADY IN THE
 5 REPOSITORY, I ASSUME.
 6 MR. MCCOY: THE NAMES OF THE CLIENTS WHO
 7 ARE INVOLVED, IF THOSE AREN'T ALREADY IN SOME
 8 DEFENDANT'S RECORDS, THAT CERTAINLY IS IN OUR RECORDS.
 9 WE COULD JUST PROVIDE THAT LIST.
 10 THE COURT: YOU OUGHT TO PROVIDE THEM AS
 11 AN INTEGRATED DOCUMENT SO WHEN YOU PICK UP THE XYZ POWER
 12 COMPANY AND THE COMPANIES THAT SUPPLIED MACHINERY AND
 13 OTHER SECONDARY LEVEL EXPOSURE, ALLEGED EXPOSURE ITEMS,
 14 ARE ALL IN THE SAME PLACE.
 15 MR. MCCOY: RIGHT, SO WITH THE JOB SITE
 16 MEMORANDUM, JUDGE, YOU ARE RIGHT, WE COULD PROVIDE A
 17 LISTING OF THE CLIENTS AND HOW WE GOT TO 25 BY CASE FOR
 18 WESTINGHOUSE AND EVERYBODY ELSE.
 19 THE COURT: IF THERE IS MEDICAL
 20 CONNECTED WITH IT, IT WILL SAY, SEE THE IKON DEPOSITORY.
 21 MR. RILEY. IF THEY GIVE THE NAME OF SOMEBODY, BY THAT
 22 TIME ALL THE PLAINTIFFS WOULD HAVE ANSWERED THE
 23 INTERROGATORIES, YOU CAN FIND THE MEDICAL IN THE IKON
 24 REPOSITORY.
 25 MR. SPINELLI: DOES THE MEDICAL INCLUDE

1 THE X-RAYS?
 2 THE COURT: THE FILMS THEMSELVES?
 3 MR. SPINELLI: YES.
 4 THE COURT: I DON'T KNOW. I DOUBT IT.
 5 MR. SPINELLI: BOB?
 6 MR. MCCOY: WE DID NOT DEPOSIT X-RAYS TO
 7 IKON, BUT SOME OF THE X-RAYS ARE POTENTIALLY AVAILABLE,
 8 SURE. WHAT HAS BEEN DEPOSITED WAS THE READINGS ON THE
 9 X-RAYS THAT WERE DONE, WHETHER IT'S BY THE B READERS OR
 10 WHETHER IT'S BY A TREATING PHYSICIAN WHO'S NOT A
 11 QUALIFIED B READER BUT WHO FOUND -- MADE FINDINGS ON
 12 X-RAYS. THOSE HAVE BEEN DEPOSITED BUT I DON'T THINK THE
 13 ACTUAL PHYSICAL X-RAYS WERE DEPOSITED AT ALL. I KNOW
 14 THEY WERE NOT.
 15 THE COURT: NEVER GOT TO THE FILM STAGE?
 16 MR. SETTER: NO.
 17 MR. MCCOY: THEY ARE USUALLY AVAILABLE
 18 BUT -- I THINK IT'S A MATTER OF HOW MUCH DEPTH WE WANT
 19 TO GO INTO, BECAUSE I'M SHOWING YOU WHAT WE ARE DOING TO
 20 TRY TO FACILITATE THIS RIGHT NOW.
 21 THE COURT: I HAVE NO RULE ON DEPTH. I
 22 WANT TO HAVE WHATEVER IS AVAILABLE SO WE DON'T SPEND THE
 23 NEXT YEAR DOING DISCOVERY IN THE OLD FASHIONED WAY. WE
 24 WANT TO GET WHAT IS AVAILABLE ON THE TABLE AND IT MAY BE
 25 QUITE ADEQUATE. IN THE MORE SERIOUS CASES WHERE THERE'S

36

1 A LONG TRAIN OF TREATING PHYSICIANS, BIOPSIES,
 2 AUTOPSIES, ALL SORTS OF THINGS LIKE THAT, THEY EMERGE AS
 3 BEING NOT COMPLETE -- THEY EMERGE AS COMPLETE MEDICAL
 4 PICTURES. THE ONES THAT ARE PLEURAL PLAQUE DISABILITY,
 5 NO LOST TIME, THOSE CASES, ALL YOU ARE GOING TO FIND
 6 PROBABLY IS -- UNLESS THEY HAVE GONE ON TO OTHER
 7 DISEASES, ALL YOU ARE GOING TO FIND IS THE ORIGINAL
 8 SURVEY MATERIAL, I ASSUME. I PULLED THREE OR FOUR OR
 9 FIVE OR SIX OF THEM TO LOOK AT IT. THE ONES THAT ARE
 10 PLEURAL PLAQUES WITH NO ASBESTOSIS AND NO OTHER
 11 DISABILITY, THERE ARE ONLY THREE OR FOUR PIECES OF PAPER
 12 IN THERE.
 13 MR. SETTER: YOUR HONOR, IF I MAY, DAVE
 14 SETTER. ONE OF THE ISSUES THAT WE HAVE AS DEFENDANTS IS
 15 LOOKING AT THE VARIOUS CASES MEDICALLY, WHETHER THEY ARE
 16 NONMALIGNANT PLEURAL PLAQUES, ASBESTOTICS OR EVEN THE
 17 LUNG CANCERS ARE PRIMARILY GENERATED BY THREE DOCTORS.
 18 AND THAT IS ONE OF THE ISSUES THAT MY CLIENTS HAVE. I
 19 CAN'T SPEAK FOR THE OTHER DEFENDANTS, BUT THOSE THREE
 20 DOCTORS, WE NEED TO TAKE A LOOK AT WHAT THEY LOOKED AT
 21 IN TERMS OF THE X-RAYS TO MAKE THE CONCLUSIONS THAT THEY
 22 HAVE ASBESTOSIS, SEVERE ASBESTOSIS OR UNDERLYING
 23 ASBESTOSIS FOR LUNG CANCER FOR US TO AGREE TO ANY TYPE
 24 OF MEDIATION. WE ALSO WANT TO KNOW WHAT THE TREATING
 25 DOCTORS HAVE CORROBORATED OR NOT CORROBORATED WITH THE

1 SCREENING DOCTORS THAT THEY USED. BUT IF THEY HAVE NOT
2 EVEN PUT THE X-RAY FILMS IN THERE, WE ARE WASTING A LOT
3 OF TIME.

4 THE COURT: MR. SETTER, IF YOU HAVE NOT
5 ACCESSED -- IF YOU HAVE GOTTEN ANSWERS TO
6 INTERROGATORIES SOMEWHERE AND THEY ARE AVAILABLE TO YOU
7 AND THEY INCORPORATE THINGS IN THE IKON DEPOSITORY, THEN
8 YOU ARE GOING TO HAVE TO GET TO THE REPOSITORY AND LOOK
9 AT THOSE RECORDS. THAT STARTS THE PROCESS.

10 MR. SETTER: THERE ARE NO X-RAYS IN THAT
11 REPOSITORY. WE HAVE CHECKED.

12 THE COURT: I UNDERSTAND THAT.

13 MR. SETTER: I'M NOT GOING TO TAKE ON
14 FAITH WHAT DR. SCHONFELD SAID.

15 THE COURT: FIRST OF ALL, HE WON'T
16 REMEMBER WHAT HAPPENED TO THE FILMS. HE HAS ALREADY
17 TESTIFIED THAT WHEN HE CALLED THE PLAINTIFFS ATTORNEY TO
18 FIND OUT WHAT HE SHOULD DO WITH MATERIALS, THEY SAID WE
19 HAVE COPIES SO YOU CAN GO AHEAD AND DESTROY THEM SO YOU
20 DON'T HAVE TO FILL UP YOUR OFFICE WITH PAPER. I DON'T
21 KNOW WHAT HAPPENED TO THE FILMS.

22 MR. SETTER: WELL, WE HAVE THAT ISSUE AS
23 WELL AS WE HAVE ISSUES WITH DR. SCHONFELD IN GENERAL IN
24 TERMS OF HIS PRACTICES AND SO FORTH.

25 THE COURT: THAT ISSUE OF WHETHER OR NOT

1 THERE HAS TO BE, BLUNTLY STATED, DEPOSITIONS OF ONE OR
2 MORE DOCTORS WHO SAW GROUPS OF PEOPLE IS TIED INTO HOW
3 WE ARE GOING TO MANAGE THE SUBSTANTIVE REVIEW OF THE
4 CASES FOR MEDIATION PURPOSES. I HAVE SOMETHING IN MIND
5 THAT WILL EMERGE HERE. EVERYTHING YOU SAID IS TRUE, BUT
6 THAT HAS BEEN ON THE TABLE FOR SOME PERIOD FROM THE
7 BEGINNING.

8 MR. SETTER: I APPRECIATE IT. BUT TO
9 HAVE A SUMMARY HERE SAYING THESE INDIVIDUALS HAVE SEVERE
10 ASBESTOSIS WITHOUT IDENTIFYING WHO THE DOCTOR IS,
11 WITHOUT PRODUCING THE X-RAYS THAT ARE THE BASIS FOR IT,
12 WITHOUT PROVIDING THE UNDERLYING TREATING RECORDS THAT
13 DON'T CORROBORATE OR CORROBORATE IT REALLY DOES NOT HELP
14 MY CLIENTS FROM MY EVALUATION STANDPOINT TO DETERMINE
15 WHETHER WE OUGHT TO SETTLE THE CASE OR GO FORWARD WITH
16 DAUBERT HEARINGS.

17 THE COURT: MR. SETTER, I APPRECIATE WHAT
18 YOU SAID. YOU ARE ABSOLUTELY CORRECT. I'M AWARE OF THE
19 PLAINTIFFS LAW FIRMS -- I DID NOT ASK THEM TO DO THIS.
20 I DID NOT KNOW WHAT WAS GOING TO BE SHOWN ON THE SCREEN
21 UNTIL THEY DID IT AND IT'S A WAY OF PULLING TOGETHER
22 THINGS THAT MR. -- THE MEMBERS OF THE DEFENSE LIAISON
23 COMMITTEE HAS BROUGHT TO OUR ATTENTION, THE PLAINTIFFS
24 ATTENTION THROUGHOUT THESE PREPARATIONS AND MONTHS. THE
25 PLAINTIFF -- THE LAW FIRM IS NOT GOING TO GET ANYWHERE

1 IMPRESSING SOMEONE WITH ANYTHING BEYOND WHAT WE SEE ON
2 THIS SCREEN OR ON THE PAPERS THAT IT CAME FROM IF YOU
3 DON'T TIE IT IN TO A PARTICULAR INDIVIDUAL WITH A
4 PARTICULAR DISEASE WITH CORROBORATING INFORMATION IF
5 IT'S AVAILABLE. IF IT'S NOT, THEN WE NEGOTIATE THAT
6 CASE. THAT CASE IS PRETTY WEAK. BUT WE ARE GOING TO
7 FIND OUT WHAT IS AVAILABLE. I DON'T KNOW WHERE THE
8 X-RAYS ARE. MR. MCCOY SAYS HE THINKS THERE ARE SOME
9 THAT MAY BE MADE AVAILABLE, SOMETHING LIKE THAT, WHAT HE
10 JUST SAID. IF YOU WANT TO ADD -- MAYBE WE SHOULD ADD
11 THAT TO A TASK FOR SOMEONE IN YOUR OFFICE TO FIND OUT
12 FOR US. I THINK THIS WORK THAT HAS BEEN DONE WILL BE
13 HELPFUL IF YOU CAN TIE THE WORKERS TO THE POTENTIAL FOR
14 EXPOSURE. AT LEAST THE DEFENSE COUNSEL CAN SAY, LOOK,
15 WE HAVE BEEN TOLD BY THE PLAINTIFFS THAT THEY CAN PROVE
16 EXPOSURE TO X, Y AND Z REPAIR KITS FOR WESTINGHOUSE,
17 WHAT YOU CALL IT AND DIFFERENT ITEMS THAT THEY BROUGHT
18 TO THE JOB SITE THAT ARE CULLED FROM THEIR RECORDS. BUT
19 IT'S NOT GOING TO BE VERY FRUITFUL WITHOUT TYING IT TO
20 INDIVIDUALS AND MEDICAL DIAGNOSES.

21 MR. MCCOY: THAT IS THE NEXT STEP THAT WE
22 ARE WORKING ON, JUDGE. WE ARE IDENTIFYING WHAT WE CALL
23 IN OUR MIND OUR BEST 50 CASES. AND THOSE 50 CASES WE
24 ARE GOING TO CALL TO THE DEFENDANT'S ATTENTION AND WE
25 ARE TAKING LONGER TO PREPARE THOSE INTERROGATORY ANSWERS

1 BECAUSE WE ARE DOING IT MORE THOROUGHLY ON THOSE CASES
2 AND DEVOTING MORE RESOURCES TO THOSE BUT THOSE ARE GOING
3 TO START BEING DEPOSITED AT THE END OF THIS WEEK.

4 THE COURT: YOU HAVE AN END DATE OF
5 FEBRUARY 21ST DEADLINE TO FINISH THIS. DO YOU EXPECT TO
6 MAKE THAT DEADLINE?

7 MR. MCCOY: YES, FOR 95 PERCENT OR MAYBE
8 BETTER.

9 THE COURT: YOU DON'T HAVE TO EXPLAIN
10 WHAT YOU ARE DOING, BUT YOU HAVE A DEADLINE SO YOU HAVE
11 TO MEET IT OR GET EXCUSED FROM IT SOMEHOW.

12 MR. MCCOY: THAT DEADLINE IS FIRM FOR US.
13 WE WANT TO KEEP THIS MOVING.

14 THE COURT: THAT IS ITEM ROMAN NUMERAL II
15 A.

16 MR. MCCOY: IN THAT CONTEXT WE WILL HAVE
17 WHAT WE THINK ARE THE 50 BEST CASES FROM OUR
18 PERSPECTIVE, MEDICALLY, DAMAGE WISE AND EXPOSURE WISE
19 AND THAT WILL BE -- WE WILL IDENTIFY THOSE TO THE
20 DEFENSE.

21 THE COURT: WE HAVE NOT DECIDED THAT WE
22 ARE GOING TO -- HOW WE ARE GOING TO HANDLE YOUR
23 SUBMISSION, THE AVAILABILITY OF THAT INFORMATION. WE
24 HAVE NEVER GOTTEN IT AS FAR AS -- EVERYONE IN THE ROOM
25 SHOULD KNOW THAT NEITHER THE MEDIATOR NOR THE DEFENSE

1 HAS SAID TO THE PLAINTIFFS, PUT YOUR BEST 50 CASES
2 TOGETHER AND NOR DID WE ASK THEM TO PREPARE THESE --
3 PULLING TOGETHER THE INFORMATION ON POTENTIAL EXPOSURE.
4 I COMPLIMENT YOU FOR DOING IT. THAT IS NOT A PROBLEM
5 BUT WE HAVE TO HAVE THE OTHER TWO PARTS OF THE EQUATION
6 AND THAT IS THE IDENTITY OF THE WORKERS AND THE MEDICAL
7 MATERIAL.

8 MR. MCCOY: AND WE WILL PROVIDE --

9 THE COURT: FRANKLY, I WOULDN'T PROVIDE
10 IT UNTIL YOU HAVE THOSE. NOBODY CAN DO MUCH WITH IT
11 UNLESS THE DEFENSE WANTS THESE WITHOUT THE MEDICAL. THE
12 NAMES ARE GOING TO BE THE EASIEST ONE, I ASSUME.

13 MR. MCCOY: AND FOR --

14 THE COURT: MEDICAL IS A LITTLE MORE
15 DIFFICULT.

16 MR. MCCOY: THE NAMES WE HAVE IN OUR
17 DATABASE. THE DISEASE CATEGORIES IN OUR DATABASE, WE
18 HAVE THOSE. THE MEDICAL RECORDS THEMSELVES WE HAVE FOR
19 SOME OF THESE CLIENTS ALREADY AND FOR THE ONES THAT WE
20 DON'T HAVE THAT WE CONSIDER TO BE THE BEST CASES, WE ARE
21 ORDERING ALL THOSE ADDITIONALLY.

22 THE COURT: WHERE ARE YOU SENDING -- I'VE
23 FORGOTTEN THE PROTOCOL WE SET UP, FRANKLY. WHERE ARE
24 YOU SENDING THE ANSWERS TO INTERROGATORIES?

25 MR. MCCOY: THEY ARE GOING TO IKON.

1 EVERYTHING IS GOING TO IKON.

2 THE COURT: I DON'T MEAN THE PAPERS THAT
3 ARE INCORPORATED IN THE ANSWERS BUT THE ACTUAL ANSWERS
4 WHERE YOU SAY, QUESTION NUMBER 13, ANSWER, SEE IKON,
5 REPORT FROM DOCTOR JONES. IS THE DOCUMENT THAT IS THE
6 ANSWER TO THE INTERROGATORIES, WHERE ARE THEY GOING?

7 MR. MCCOY: THEY'RE GOING TO IKON.

8 THE COURT: SO THEY WILL BE IN THE
9 ELECTRONIC DATA FILE FOR MR. JONES?

10 MR. MCCOY: YES.

11 THE COURT: THE ANSWERS TO
12 INTERROGATORIES ARE THERE.

13 MR. MCCOY: RIGHT. MOST OF THE FILES AT
14 IKON ARE -- THEY HAVE -- EVERYTHING PRETTY MUCH IS PDFS
15 SO WE SEND THE HARD COPY OR WE SEND THEM THE PDF AND
16 THEY HAVE BASICALLY THE ELECTRONIC FILES AVAILABLE FOR
17 WHOEVER IS AUTHORIZED TO USE IT WITH THAT INFORMATION.
18 EVERYTHING YOU SEE ON HERE IS EITHER AT IKON OR IF IT'S
19 LIKE A BOX AT OUR OFFICE, THEN WE WILL SEND IT UPON
20 REQUEST.

21 THE COURT: I THINK THE DEFENDANTS OUGHT
22 TO BE -- IF I COULD HAVE THE ATTENTION OF DEFENSE
23 COUNSEL, PLEASE.

24 MR. EVERT: SORRY.

25 THE COURT: IF YOU WANT TO KNOW ANYTHING

1 ABOUT THESE CASES THAT YOU ARE BEING ASKED TO DEFEND
2 AGAINST AND HOPEFULLY FOR THE PLAINTIFF WANT TO SETTLE,
3 YOU HAVE THIS MATERIAL IN THE IKON REPOSITORY, YOU
4 BETTER GO GET IT. IT'S NOT GOING TO JUMP ON YOUR DESKS.
5 I THINK WE SET UP THE SYSTEM EARLY IN THE CASE AND I
6 THINK IT'S A GOOD ONE. BUT IF YOU ARE GOING TO SEARCH
7 FOR CERTAIN INDIVIDUALS AS MR. SETTER WAS POINTING OUT
8 YOU HAVE TO KNOW WHO THE INDIVIDUALS ARE. THEN YOU CAN
9 GET THE MEDICAL AND THE ANSWERS TO INTERROGATORIES. YOU
10 FILED LITERALLY HUNDREDS OF ANSWERS, I ASSUME.

11 MR. MCCOY: RIGHT.

12 THE COURT: HOW MANY DO YOU HAVE LEFT TO
13 DO, DO YOU ESTIMATE?

14 MR. MCCOY: THERE IS ABOUT 800 LEFT TO
15 DO, BUT THEY ARE LARGELY COMPLETED, MOST OF THEM. WE
16 ARE JUST POLISHING THOSE OFF SO THERE WILL BE MORE OF
17 THEM COMING IN EVERY WEEK.

18 THE COURT: PLAINTIFFS' ANSWERS TO THE
19 AGREED SET OF INTERROGATORIES. I WOULD LIKE TO MOVE ON
20 TO SOMETHING ELSE IF WE HAVE NOT -- AS LONG AS WE HAVE
21 EXHAUSTED WHATEVER WE NEED. DO DEFENSE FOLKS HAVE ANY
22 COMMENTS ON THE ANSWERS TO INTERROGATORY SYSTEM AND HOW
23 IT IS GOING?

24 MR. EVERT: CERTAINLY MR. MCCOY'S SITE IS
25 CONSISTENT WITH WHAT WE HAVE SEEN. WE HAVE SEEN ROUGHLY

1 ABOUT 600 OR SO THAT HAVE BEEN FILED, 6 OR 700, I THINK.
2 AND THAT WOULD LEAVE 7 OR 800 LEFT, BALL PARK.

3 THE COURT: THEN WE WILL EXPECT THE
4 PLAINTIFFS TO CONTINUE AND FINISH UP THEIR ANSWERS,
5 REPORT TO THE PARTIES AND THE MEDIATOR ON OR BEFORE
6 FEBRUARY 21ST AS IS IN THE ORIGINAL ORDER.

7 MR. MCCOY: JUDGE --

8 THE COURT: THE OTHER VERY IMPORTANT --
9 PARDON ME.

10 MR. MCCOY: I WOULD LIKE TO JUST TAKE TWO
11 MINUTES TO FINISH THIS PART RIGHT HERE BECAUSE I THINK
12 IT'S IMPORTANT IN TERMS OF EVERYBODY UNDERSTANDING HOW
13 WE EXPECT TO PROVE THESE CASES.

14 THE COURT: GO AHEAD.

15 MR. MCCOY: I'D LIKE TO TAKE TWO MORE
16 MINUTES AND SHOW THE REST. I HAVE A COUPLE OTHER
17 EXAMPLES HERE.

18 THE COURT: SURE. GO AHEAD.

19 MR. MCCOY: LET ME DO THAT. ALL RIGHT.
20 SO THEN THIS IS ANOTHER ONE OF OUR MEMOS. THIS IS
21 DRESDEN NUCLEAR POWER STATION, WHICH WAS A HUGE --
22 PROBABLY THE BIGGEST JOB SITE IN ILLINOIS. I WANT TO
23 JUST POINT OUT ON THIS ONE, WE HAVE 80 CLIENTS THERE.
24 THERE ARE 21 OF THE CASES THAT ARE GE'S, KEEP GOING
25 DOWN. AGAIN, THESE ARE OUR DISEASE CATEGORY MIXES SO WE

1 HAVE 12 LUNG CANCERS WITH UNDERLYING ASBESTOS DISEASE.
 2 GO DOWN. WE HAVE 63 OF OUR CLIENTS ARE STILL ALIVE AT
 3 THAT LOCATION, MEANING THEY COULD TESTIFY IF THEY HAD
 4 TO, BUT AVAILABLE DOCUMENTS IN OUR FILES, WE HAVE TWO
 5 BOXES, ONE IS GE'S PROPOSAL TO COM-ED FOR THE
 6 CONSTRUCTION. THEN WE HAVE MORE DOCUMENTS WHICH WE
 7 LISTED. WE HAVE THE GE CONTRACTS FOR UNITS 1, 2, AND 3.
 8 THE SIGNIFICANCE OF THIS, JUDGE, AGAIN
 9 THIS IS NOT ALL THE EVIDENCE, THESE BOXES, THEY CAN GET
 10 WHAT THEY WANT, THE WHOLE BOX IF THEY WANT, BUT THE
 11 SIGNIFICANCE OF THIS IS THAT IT JUST POINTS OUT THAT
 12 THIS IS A JOB SITE WHERE WE WILL BE FOCUSING LIABILITY
 13 ON GENERAL ELECTRIC UNDER THE JOINT AND SEVERAL
 14 LIABILITY OF ILLINOIS. WE ALSO HAVE ON HERE
 15 OWENS-CORNING FIBERGLAS INVOICES TO ILLINOIS INSULATION
 16 AND BECHTEL, WHICH WERE TWO OF THE BIG CONTRACTORS FOR
 17 KAYLO PIPE INSULATION FOR '58 OR '59. THAT WOULD FOCUS
 18 MR. RILEY AND OWENS ILLINOIS ON SOME OF THE EVIDENCE
 19 THAT WE HAVE AT THAT JOB SITE FOR THEIR CLIENTS. KEEP
 20 GOING DOWN. AND THEN AGAIN WE LISTED SOME OF THE
 21 WITNESSES. THERE IS A LOT MORE THAT WOULD BE ADDED, BUT
 22 THIS IS SOME OF THE ONES THAT WE SO FAR IDENTIFIED AS
 23 HAVING HELPFUL TESTIMONY OR TESTIMONY ABOUT OTHER
 24 DEFENDANTS WHO THEY COULD BLAME.
 25 LET'S GO TO OUR NEXT MEMO, WHICH IS PABST

1 BREWERY. I WILL HAVE A COPY OF ALL OF THESE FOR JOEL,
 2 RIGHT HERE, JUST PASS THOSE UP. THESE ARE ON DEPOSIT AT
 3 THE JOB SITE, AT IKON, JUDGE.
 4 THE COURT: DOES DEFENSE WANT A COPY NOW
 5 EVEN THOUGH THEY ARE NOT TIED INTO INDIVIDUALS?
 6 MR. EVERT: I THINK WE GOT COPIES
 7 ELECTRONICALLY YESTERDAY, I THINK. AT LEAST MY OFFICE
 8 GOT SOME OF THESE YESTERDAY.
 9 MR. MCCOY: THAT'S WHY I HAVE THE SCREEN,
 10 EVERYBODY CAN SEE IT AND THEN THEY GET IT. PABST
 11 BREWERY, JUDGE, WE'VE GOT 72 CLIENTS AND THIS IS 63. WE
 12 GO DOWN THE LIST. ANYWAYS WE HAVE 42 RAPID AMERICANS.
 13 THAT IS WHAT I WANT TO POINT OUT HERE. GO DOWN. OKAY,
 14 AGAIN OUR DISEASE MIX. WHAT WE HAVE HERE AT THIS JOB
 15 SITE ARE 1394 INVOICES. SPRINKMANN IS SELLING MATERIALS
 16 TO PABST BREWERY FROM '62 TO '74. NOW THAT ITEM IS
 17 SIGNIFICANT BECAUSE SPRINKMANN SOLD ALMOST EXCLUSIVELY
 18 CAREY BAG FIBERS OF CEMENT. AND AGAIN THAT WOULD FOCUS
 19 RAPID AMERICAN ON THEIR RESPONSIBILITY FOR THE CAREY
 20 PRODUCTS BEFORE JUNE 1ST OF 1967 WHEN A LOT OF THESE
 21 MATERIALS WERE DELIVERED THERE BY SPRINKMANN. THAT
 22 WOULD BE CAREY PRODUCT FOR WHICH RAPID WOULD BE
 23 RESPONSIBLE. AGAIN, THAT HELPS TO FOCUS THIS AS A RAPID
 24 AMERICAN JOB SITE WHERE WE WOULD BE LOOKING FOR THEM TO
 25 PAY SIGNIFICANTLY.

1 AND ANOTHER EXAMPLE HERE, THE PABST
 2 BREWERY IS IN THE L&S LEDGER WHICH IS A LOCAL
 3 CONTRACTOR, L&S INSULATION IN MILWAUKEE. THEIR JOBS
 4 WERE FROM '47 TO '77. NOW, FROM '47 TO -- OR BEFORE
 5 1959 WHEN OWENS ILLINOIS IS RESPONSIBLE FOR KAYLO, THE
 6 TESTIMONY IN OUR STATE CASES IS WELL KNOWN THAT L&S --
 7 THIS AGAIN MAY BE MR. RILEY'S BUT I'M NOT SAYING THIS IS
 8 NECESSARILY A FACT, BUT THERE IS SIGNIFICANT TESTIMONY
 9 THAT IS KNOWN TO EVERYBODY ABOUT L&S USING ONLY KAYLO
 10 PRODUCTS. SO AGAIN, THIS WOULD BE IF I WAS LOOKING AT
 11 THIS ALL EYES WOULD INDICATE THAT WE WOULD HAVE
 12 SIGNIFICANT EVIDENCE ON OWENS ILLINOIS FROM THESE L&S
 13 JOBS.
 14 LET'S GO ON TO THE NEXT ONE, WHICH WOULD
 15 BE MILLER BREWERY. SO MILLER BREWERY AND AGAIN WE HAVE
 16 37 OWENS ILLINOIS DEFENDANTS IN THERE. GO DOWN. WE
 17 HAVE 51 ENTRIES IN THE L&S LEDGER, WHICH AGAIN IS THAT
 18 CONTRACTOR THAT WAS USING KAYLO STARTING FROM '49 TO
 19 '78. SO ONCE AGAIN THAT WOULD PROVIDE SOME INDICATION
 20 OF OUR EVIDENCE ON OWENS ILLINOIS.
 21 LET'S GO TO OUR NEXT JOB SITE, WHICH IS
 22 POWERTON. POWERTON IS ANOTHER POWER STATION IN CENTRAL
 23 ILLINOIS. SO HERE POWERTON, WE HAVE GOT 58 CLIENTS
 24 TOTAL, 50 OF THEM ARE WESTINGHOUSE, AGAINST
 25 WESTINGHOUSE. KEEP GOING DOWN. HERE WE HAVE IN OUR

1 BOXES 349 AND 52 WHICH THE DEFENDANTS CAN REQUEST
 2 THROUGH IKON, WE WILL BRING THEM OVER. BUT WE HAVE ON
 3 WESTINGHOUSE HERE, IN THOSE BOXES, WE FOUND ALL OF THIS
 4 INFORMATION ABOUT WESTINGHOUSE PRODUCTS THAT WERE
 5 INVOLVED IN SOME WORK -- OTHER WORK DONE BY
 6 WESTINGHOUSE. SO JUST AN EXAMPLE, AND OF COURSE THERE
 7 IS SOME GE STUFF WE FOUND HERE, TOO, THAT IS LISTED. SO
 8 AGAIN, WHAT WE ARE TRYING TO DO, JUDGE, IS TO HELP FOCUS
 9 WHAT WE FOUND IN THAT EVIDENCE ON CERTAIN DEFENDANTS.
 10 WHY DON'T YOU GO DOWN ONE MORE HERE, ROB.
 11 THE COURT: WE GOT THE PICTURE.
 12 MR. MCCOY: CHESTERTON CRANE. THAT IS
 13 THE ONES THAT I WANTED TO GO THROUGH AND HOPEFULLY THAT
 14 INDICATES TO YOUR HONOR WHAT WE ARE TRYING TO DO FROM
 15 OUR END TO MAKE THIS THING FACILITATE THE DEFENDANTS
 16 UNDERSTANDING OUR CASES.
 17 THE COURT: OKAY.
 18 MR. BRUCH: DAN BRUCH. CAN WE HAVE
 19 ACCESS TO THOSE DISPLAYS THAT WERE PUT UP TODAY BECAUSE
 20 A LOT OF PEOPLE DON'T HAVE THEM.
 21 MR. EVERT: I WILL BE GLAD TO SEND AROUND
 22 WHAT I GOT YESTERDAY. I ASSUME THAT IS OKAY. FRANKLY,
 23 I HAVE NOT LOOKED AT THEM. THEY CAME YESTERDAY, BUT I
 24 GOT ABOUT SIX OF THEM WHICH I PRESUME ARE THE ONES THAT
 25 ARE UP THERE. I WILL SEND THEM TO EVERYBODY.

1 MR. MCCOY: THEY ARE ALSO AT IKON, BUT ON
 2 THESE JOB SITE MEMOS WE PLAN TO JUST SERVE THESE
 3 SIMULTANEOUSLY ON THE LIAISON COMMITTEE AS WE DEPOSIT
 4 WITH IKON SO THEY WILL KNOW WHAT WE HAVE DONE.
 5 MR. EVERT: YOUR HONOR, I DON'T WANT --
 6 THERE IS NO POINT IN DEBATING THIS TODAY. I ECHO MR.
 7 RILEY'S COMMENTS ABOUT THE USEFULNESS OF THE DOCUMENTS.
 8 IF THE PLAINTIFFS WANT TO DO IT, WE WILL BE GLAD TO LOOK
 9 AT THEM.

10 THE COURT: AS LONG AS THEY CAN MEET
 11 OTHER DEADLINES. IF WE THINK IT'S IMPORTANT ENOUGH TO
 12 ASK THEM TO DO IT BY THE MEDIATOR'S ORDER, THAT IS ONE
 13 THING. BUT -- AND THEY ARE VOLUNTEERING TO DO IT TO
 14 BOLSTER THEIR POSITION, IS UNDERSTANDABLE AND MAY NOT
 15 END UP TO BE HELPFUL. BUT IF THE PLAINTIFFS' LAWYERS
 16 SAY WE CAN'T GET SOMETHING DONE BECAUSE WE ARE TOO BUSY
 17 MAKING UP CHARTS OR SOMETHING THAT THE MEDIATION DID NOT
 18 ENCOMPASS, THEN THAT WILL BE A PROBLEM. BUT NOT
 19 SURPRISING THAT THE PLAINTIFF IS DOING THIS WORK BECAUSE
 20 THE DEFENSE HAS BEEN REMINDING THEM THROUGHOUT THIS --
 21 MONTHS AND MONTHS OF HAVING MEETINGS AND TRYING TO GET
 22 ORGANIZED THAT THIS KIND OF CONNECTION WAS NOT MADE
 23 AVAILABLE TO THE DEFENSE.

24 SO WHAT DOES THE PLAINTIFF HAVE
 25 ULTIMATELY? THAT IS WHAT THEY ARE GETTING TOGETHER. I

1 THINK ULTIMATELY IT WILL BE HELPFUL IF THEY TIE IT IN
 2 WITH INDIVIDUAL WORKERS AND MEDICAL. THERE IS ONE THING
 3 THAT IS MISSING. AND ONLY IF YOU ARE TEACHING A CLE
 4 COURSE WOULD YOU ASK SOMEBODY IN THE AUDIENCE TO TELL
 5 YOU WHAT IS MISSING. WHAT IS MISSING IS THE ALLEGED
 6 REPEATED EXPOSURE AND WHERE THE ASBESTOS CONTAINING
 7 MATERIAL WAS IN THE PARTICULAR PIECE OF EQUIPMENT THAT
 8 WAS DELIVERED. IF IT'S A GENERATOR THAT HAD ASBESTOS
 9 INSIDE OF IT, HOW DID A WORKER GET EXPOSED TO ASBESTOS
 10 IF IT'S NOT FRIABLE. IT'S INSIDE SOME KIND OF
 11 GENERATOR. I'M SURE THERE ARE WAYS THAT THEY DO, THEY
 12 REPAIR THEM OR THEY INSTALL THEM, BUT WE HAVE NOT HEARD
 13 THAT PART YET. IT'S THE REASONABLY DAILY -- TYPICALLY
 14 FOR THE WORKERS IT'S REASONABLY CONTINUOUS DAILY
 15 EXPOSURE THAT THE PLAINTIFF WILL TRY TO PROVE IF THEY
 16 HAD TO TRY A PARTICULAR CASE. I DON'T KNOW HOW YOU ARE
 17 GOING TO DO THAT EXCEPT THROUGH THE -- YOU START THE
 18 PROCESS BY TELLING EVERYBODY THE NAMES OF THE
 19 SUPERVISORS AND/OR CO-WORKERS THAT ARE ALIVE AND WELL
 20 AND WILLING TO TESTIFY. BUT WHAT THEY ARE GOING TO SAY,
 21 WE DON'T KNOW YET. WE HAVE TO FIGURE OUT HOW TO GET
 22 THAT ON THE TABLE. IF SOMEBODY THINKS I'M ON THE WRONG
 23 TOOT LET ME KNOW.

24 ITEM 2B IS THE DEFENSE DISCOVERY BY
 25 PLAINTIFFS REQUEST. PROBABLY THE FALL OF '09 THROUGH

1 THE WINTER, THERE WAS EXCHANGE OF PAPERS ON THE ISSUE OF
 2 WHAT THE PLAINTIFFS WOULD LIKE TO HAVE FROM THE DEFENSE
 3 BY WAY OF CONCILIATORY, INFORMAL DISCOVERY DIRECTED BY
 4 LETTER. AND THERE WAS EXCHANGE OF LETTERS BACK AND
 5 FORTH. AND I'M SURE THAT THE LAST TIME WE MET, I ASKED
 6 YOU, AND I THINK IT MAY BE IN THE PAPERWORK SOMEWHERE,
 7 TO BEGIN TO WORK WITH ON THAT AGAIN. THEY BROUGHT IT UP
 8 SEVERAL TIMES. I DON'T KNOW IF YOU HAVE DONE ANY WORK
 9 ON IT YET OR NOT. BUT THE REQUESTS, IF THEY ARE LIKE
 10 THE ONES THAT ARE DIRECTED TO NONPARTIES THAT I HAVE
 11 SEEN IN THE OBJECTIONS TO THE NONPARTY DISCOVERY OR
 12 THIRD PARTY DISCOVERY, SUCH REQUESTS AS ALL DOCUMENTS
 13 THAT HAVE ANYTHING TO DO WITH X, ALL DOCUMENTS THAT HAVE
 14 SOMETHING TO DO WITH Y, IT'S JUST NOT GOING TO HAPPEN.

15 WE HAVE TO COME UP WITH SOME SPECIFIC
 16 THINGS THAT THE PLAINTIFF NEEDS THAT CAN BE DEALT WITH.
 17 AND THE DEFENSE'S OPENING SHOT THAT PLAINTIFF ALREADY
 18 KNOWS WHAT EVERYBODY HAD ON-THE-JOB AND WHERE THE WORK
 19 PLACES ARE AND SO FORTH. AND I MADE THE COMMENT THAT
 20 MAY HAVE SEEMED FLIPPANT AT THE TIME, BUT I DIDN'T
 21 INTEND TO IT BE, AND THAT IS IF THERE WERE OBJECTION TO
 22 AN INTERROGATORY THAT SAID THEY ALREADY HAD THIS
 23 INFORMATION, I DON'T THINK IT WOULD GO VERY FAR. YOU
 24 HAVE TO KNOW. I THINK THE PLAINTIFF IS ENTITLED TO HAVE
 25 SOME BASIC INFORMATION AND THAT YOU ARE GOING TO HAVE TO

1 NEGOTIATE AROUND THAT OBSERVATION ON MY PART. I DON'T
 2 KNOW HOW MUCH WORK IF ANY HAS BEEN DONE ON THIS.
 3 MR. MCCOY: JUDGE, THIS PAST TWO WEEKS
 4 PLAINTIFFS HAVE SERVED DISCOVERY REQUESTS ON FIVE OF THE
 5 PRIMARY DEFENDANTS IN TERMS OF THE NUMBER OF CASES IN
 6 OUR INVENTORY. SO THAT GROUP OF DISCOVERY WENT OUT
 7 BASED ON JOB SITES AND WE HAVE IN OUR CASES -- ONE OF
 8 THE THINGS IS WE HAVE SEVERAL, MORE THAN A THOUSAND
 9 LARGE JOB SITES IN THE TERRITORY THAT WE ARE TALKING
 10 ABOUT. SO, FOR INSTANCE, WITH WESTINGHOUSE WE HAD
 11 PROVIDED A LIST OF DISCOVERY BY JOB SITE THAT WE WANTED
 12 AND WE LIMITED IT INITIALLY TO THE JOB SITES WHERE THERE
 13 WERE TEN OR MORE CASES IN WHICH WESTINGHOUSE WAS A
 14 DEFENDANT AND THAT CAME OUT TO 215 JOB SITES WHERE TEN
 15 OR MORE OF OUR CLIENTS WERE SUING WESTINGHOUSE. WE
 16 ASKED THEM FOR THE PRODUCTS THAT THEY HAD AT THOSE JOB
 17 SITES.

18 THAT IS THE DISCOVERY REQUEST, AND ALSO
 19 THE TESTIMONY THAT THEY HAVE ABOUT THAT JOB SITE AT
 20 WESTINGHOUSE, CBS I SHOULD SAY, ON BEHALF OF
 21 WESTINGHOUSE HAS ACCUMULATED OVER A PERIOD OF TIME. SO
 22 THAT WAS SERVED. NOW, THERE HAS NOT BEEN ANY CONTACT BY
 23 ANY DEFENDANT TO US ABOUT THE DISCOVERY REQUESTS THAT
 24 WERE SERVED, BUT THAT IS -- THAT IS WHERE WE ARE AT.

25 IF WE WERE TO EXPAND OUR NUMBER OF CASES

1 IN THE DISCOVERY REQUESTS TO WHERE THERE ARE THREE OR
2 MORE OF OUR CLIENTS AGAINST WESTINGHOUSE, THAT WOULD
3 MEAN 753 JOB SITES. SO, THAT IS HOW DIVERSE THE
4 INFORMATION IS THAT WOULD BE RELEVANT TO OUR CLIENT
5 DATABASE. 753 JOB SITES WHERE THREE OR MORE OF OUR
6 CLIENTS HAVE SUED WESTINGHOUSE. 215 WHICH IS WHAT WE
7 ARE CURRENTLY WORKING OFF OF ON THE DISCOVERY REQUESTS
8 WHERE IT'S TEN OR MORE OF OUR CLIENTS. THAT IS HOW WE
9 DREW THE LINE. SO AGAIN, I WILL PROVIDE JOEL COPIES OF
10 WHAT WE SERVED. THIS IS CBS/WESTINGHOUSE ONE.

11 THE COURT: I FRANKLY DON'T NEED
12 DISCOVERY DOCUMENTS AT THIS TIME ANY MORE THAN I WOULD
13 IN AN ORDINARY CASE.

14 MR. MCCOY: I DIDN'T THINK YOU NEEDED
15 THEM.

16 THE COURT: UNLESS IT BECOMES AN
17 ATTENTION OF OBJECTIONS AND THEN I WILL NEED THEM, BUT I
18 WILL JUST ASK MY ERSTWHILE LAW CLERK TO FIND A PLACE FOR
19 THEM.

20 MR. MCCOY: SO IN ANY EVENT, THAT IS WHY
21 WE DID NOT PROVIDE THEM TO YOUR HONOR. BUT THAT IS
22 WHAT -- THAT IS WHAT WE HAVE DONE. AND THEY WERE SERVED
23 ON WESTINGHOUSE OR CBS, GEORGIA PACIFIC, UNION CARBIDE,
24 GENERAL ELECTRIC AND RAPID AMERICAN. THAT IS WHAT HAS
25 HAPPENED IN THE LAST TWO WEEKS. THEY ARE BASED ON THE

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1 JOB SITES WHERE WE HAVE LARGER NUMBER OF CLIENTS LIKE WE
2 JUST TALKED ABOUT.

3 THE COURT: A QUESTION HAS BEEN ASKED IN
4 A LETTER FORM? WHAT FORM? I DIDN'T LOOK AT THEM.

5 MR. MCCOY: IT JUST LOOKS LIKE A REGULAR
6 DISCOVERY REQUEST. IT'S DRAFTED WITH CAPTION AND SO ON.
7 BUT RIGHT NOW THERE IS NO TIME FRAMES FOR COMPLIANCE BY
8 THE DEFENDANTS IN PLACE ON THIS OR WHATEVER OBJECTIONS
9 I'M HAPPY TO TRY TO REACH WHATEVER ACCOMMODATIONS WE CAN
10 HERE.

11 THE COURT: CONSISTENT WITH MY USUAL
12 POLICY. IF THE DEFENSE WHO HAD GOTTEN SERVED WITH THOSE
13 MATERIALS HAS A PROBLEM WITH THEM OF ANY KIND INCLUDING
14 EXTENDING THE NORMAL DEADLINE, TAKE IT UP WITH
15 PLAINTIFFS OFFICE. I DON'T WANT TO GET INVOLVED UNLESS
16 THERE IS A PROBLEM.

17 MR. RILEY: THE DEFENDANTS JOINTLY
18 SUBMITTED A POSITION PAPER ON JANUARY 8TH, I BELIEVE, OF
19 LAST YEAR WITH RESPECT TO THEIR POSITION ON PROPER SCOPE
20 OF DISCOVERY THAT OBVIOUSLY IS NOT TO THE EXCLUSION OF
21 ANY SPECIFIC DEFENDANT'S RESPONSE TO SPECIFIC DISCOVERY.
22 THAT APPARENTLY HAS NOW BEEN SERVED.

23 THE COURT: WHY DON'T WE SET A TIME FOR
24 OURSELVES WHEN THE DEFENDANTS THAT ARE SERVED WITH THE
25 DISCOVERY JUST MENTIONED BY MR. MCCOY WILL HAVE TO FILE

1 AN OBJECTION. I DON'T WANT IT TO BE BURIED IN THE
2 ANSWERS WHEN THE TIME GETS EXTENDED -- FIRST TIME YOU
3 KNOW ABOUT THE OBJECTIONS IS WHEN THE ANSWERS ARE FILED.
4 I WOULD LIKE TO HAVE ANY OBJECTIONS OF THE DEFENDANTS
5 LISTED BY MR. MCCOY WERE SERVED WITH DISCOVERY IN THE
6 RECENT COUPLE OF WEEKS TO FILE ANY OBJECTIONS BY LETTER,
7 A SHORT -- FIRST OF ALL, TAKE THEM UP WITH PLAINTIFFS
8 COUNSEL. IF YOU HAVE TEN INTERROGATORIES YOU OBJECT TO
9 AND FIVE OF THEM CAN BE RESOLVED, THEN YOU DON'T HAVE TO
10 FIGHT OVER THE OTHER FIVE OR WE ONLY HAVE TO FIGHT OVER
11 THOSE. I'M NOT APPRECIATING PERHAPS THE AMOUNT OF WORK
12 NECESSARY IN ANSWERING. WHAT SUGGESTION DOES THE
13 COUNSEL FOR THESE SERVED DEFENDANTS HAVE TO MAKE FOR
14 FILING OBJECTIONS?

15 MR. EVERT: HOW ABOUT A COUPLE OF WEEKS,
16 YOUR HONOR. SO CALL THAT -- FEBRUARY 10 IS A MONDAY.

17 THE COURT: HOW ABOUT THE 14TH. THAT IS
18 A WONDERFUL DAY.

19 MR. EVERT: 14TH, VALENTINE'S DAY.

20 THE COURT: ANY OBJECTIONS THAT ARE FILED
21 WOULD HAVE TO INCLUDE AT LEAST 50 DARK RED AMERICAN
22 ROSES.

23 MR. DRUMKE: YOUR HONOR, DID YOU WANT TO
24 BE COPIED ON THE LETTER OR THE OBJECTIONS? YOU DON'T
25 WANT TO SEE THOSE?

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1 THE COURT: FIRST OF ALL, THE ANSWER IS
2 GENERALLY NO. I'M NOT GOING TO LOOK AT THE REQUESTS IN
3 A VACUUM. SO I WON'T BE LOOKING AT ANYTHING UNLESS
4 THERE'S A PROBLEM. THEN I WILL NEED COPIES OF THE
5 OBJECTIONS, BUT I GUESS JUST TO MANAGE IT SINCE WE DON'T
6 HAVE A DOCKET PLACE TO PUT THEM, WE WOULD NOT IN AN
7 ORDINARY CASE ANYWAY, SEND MY LAW CLERK A COPY OF ANY
8 WRITTEN OBJECTIONS THAT YOU MAKE. BUT I WANT AN
9 INFORMAL DISCUSSION TO TAKE PLACE BEFORE TO SEE IF ANY
10 OF THE OBJECTIONS CAN BE HANDLED, SUCH AS REDUCING THE
11 SCOPE, NUMBER OF YEARS. A LOT OF THOSE THINGS CAN BE
12 WORKED OUT. I WANT EVERYBODY TO BE ABLE TO CERTIFY IN
13 THEIR LETTER OBJECTIONS IF SOMETHING NEEDS TO BE FILED,
14 BE ABLE TO CERTIFY WHAT THEY DID TO TRY TO TRY TO AVOID
15 FILING A OBJECTION. THAT IS OUR USUAL WAY IN OUR LOCAL
16 RULES. IF THEY ARE -- MR. MCCOY, IF THERE ARE
17 UNRESOLVED OBJECTIONS THAT END UP IN WRITING, IF YOU
18 WANT THEM RULED ON, YOU HAVE TO ASK ME TO RULE ON THEM.

19 MR. MCCOY: OKAY.

20 MR. EVERT: I WAS GOING TO SUGGEST BASED
21 ON WHAT THE COURT JUST SAID AND SINCE THERE ARE FIVE
22 DIFFERENT SETS OUT THERE IF WE WANTED TO MAYBE USE THE
23 14TH AS A MEET AND CONFER DEADLINE AND THEN HAVE AN
24 OBJECTION DEADLINE THAT IS AFTER THAT.

25 THE COURT: THAT SHOULD BE ENOUGH TIME TO

1 FIND OUT -- FOR YOU ALL TO FIND OUT WHETHER YOU HAVE
 2 THAT STUFF SOMEHOW AVAILABLE AT LEAST THEORETICALLY
 3 BEFORE YOU SIT AND MEET AND DISCUSS. I WANT THE MEET
 4 -- LET'S MAKE IT. JOEL, WHAT DAY OF THE WEEK IS THE
 5 20TH?
 6 THE CLERK: THAT WOULD BE A SUNDAY.
 7 THE COURT: BY THE 21ST YOU WILL SERVE
 8 WRITTEN OBJECTIONS ON THE OPPOSING PARTY, NOT ON ME.
 9 MEET AND DISCUSS EARLIER THAN THE 14TH, BUT THAT IS THE
 10 LAST DAY IF NECESSARY FOR DISCUSSION.
 11 MR. EVERT: THANK YOU, YOUR HONOR.
 12 THE COURT: ITEM D, THE THIRD PARTY
 13 DISCOVERY. ANYONE HERE REPRESENT ANYONE IN A THIRD
 14 PARTY SETTING? COUNSEL STOOD UP FIRST OVER HERE.
 15 MS. SARFF: JUST TO MAKE SURE WE ARE
 16 ON --
 17 THE COURT: NAME YOURSELF AND THE NAME OF
 18 YOUR CLIENT.
 19 MS. SARFF: KIM SARFF -- S-A-R-F-F. I
 20 REPRESENT MARATHON OIL CORPORATION. JUST TO MAKE SURE
 21 THAT I'M STANDING UP CORRECTLY, WE ARE ON 2 D 1. IS
 22 THAT RIGHT?
 23 THE COURT: PARDON?
 24 MS. SARFF: APPLICABILITY OF SO-CALLED
 25 NONPARTY SUBPOENAS. IS THAT WHAT WE ARE ON RIGHT NOW?

1 THE COURT: YES.
 2 MS. SARFF: MY CLIENT MARATHON HAD ASKED
 3 THAT THIS BE ADDED TO THE AGENDA. BACK IN DECEMBER
 4 CASCINO VAUGHAN HAD SENT A SUBPOENA TO MY CLIENT. IT
 5 WAS CAPTIONED IN RE ALL: MDL 875. THEY HAD REQUESTED
 6 CERTAIN DOCUMENTS FROM MY CLIENT AND ALSO ASKED THAT A
 7 PERSON APPEAR TO TESTIFY ABOUT DOCUMENTS. ALL OF THIS
 8 IS RELATED TO THE MARATHON OIL REFINERY IN ROBINSON,
 9 ILLINOIS. THEY ALL RELATE TO A TIME PERIOD FROM 1945 TO
 10 1987, SO ABOUT A 47-YEAR PERIOD. AND JUST TO KIND OF
 11 GIVE YOU AN IDEA OF WHAT THE SUBPOENA REQUESTED, IT
 12 REQUESTED THINGS LIKE DOCUMENTS IDENTIFYING
 13 MANUFACTURERS, SUPPLIERS, CONTRACTORS, BRAND NAME
 14 ASBESTOS CONTAINING EQUIPMENT, ASBESTOS INSULATED
 15 EQUIPMENT, MACHINERY --
 16 THE COURT: EXCUSE ME FOR INTERRUPTING,
 17 WHERE ARE YOU GOING TO END UP? WHAT DO YOU WANT TO BE
 18 DONE SO I KNOW WHAT TO REMEMBER.
 19 MS. SARFF: IN SHORT, I'M JUST TRYING TO
 20 FIGURE OUT IF WE EVEN NEED TO RESPOND TO THIS SUBPOENA.
 21 MY CLIENT IS PART OF THE MDL 875. WE HAVE BEEN NAMED IN
 22 THE CASE, SHERRY B. FERRIS WHICH WAS FILED ON BEHALF OF
 23 ROBERT RINGO. AND SINCE WE ARE A PARTY TO THE MDL 875
 24 AND READING YOUR ORDER THERE WAS AN ORDER NOVEMBER 15TH,
 25 2010, THAT MAKES CLEAR THAT THIS NONPARTY SUBPOENAS THAT

1 ARE TO BE SERVED ARE TO BE SERVED ON NONPARTIES AND NOT
 2 PARTIES TO THE MDL 875. AND IT'S OUR POSITION THAT BY
 3 HAVING US RESPOND TO THIS SUBPOENA, IT VIOLATES THE
 4 PURPOSE AND SPIRIT OF YOUR ORDER IN THAT PLAINTIFFS
 5 SHOULD BE RESPONDING TO DISCOVERY FIRST AND THEN
 6 DEFENDANT SHOULD BE RESPONDING TO DISCOVERY AFTER WE
 7 HAVE MORE INFORMATION.
 8 THE COURT: QUITE FRANKLY, WHEN WE
 9 DEvised THE METHOD OF SERVING THE SUBPOENAS ON
 10 NONPARTIES OR THIRD PARTIES, I DIDN'T THINK ABOUT THE
 11 POSSIBILITY THAT ONE WOULD BE A DEFENDANT IN ONE OF
 12 THESE CASES. I DIDN'T EVEN THINK ABOUT IT. I DON'T
 13 KNOW WHETHER THE PLAINTIFFS DID OR NOT, BUT THAT WAS NOT
 14 OUR INTENT.
 15 MR. MCCOY: RIGHT. THAT WAS NOT THE
 16 INTENT, JUDGE. I DIDN'T EVEN THINK THAT MARATHON --
 17 MOST OF OUR CASES DON'T NAME THE PROPERTY OWNERS, VERY
 18 FEW DO. I DIDN'T REALIZE THAT MARATHON OIL WAS IN A
 19 CASE WHEN I SERVED IT. WE SERVED IT BECAUSE I'M SURE WE
 20 HAVE OVER 100 CLIENTS THAT WORKED AT THE MARATHON OIL
 21 REFINERY WHO ARE SUING OTHER DEFENDANTS. THAT MIGHT BE
 22 THE LARGEST JOB SITE FOR OUR FIRM. BUT IN ANY EVENT, IT
 23 WAS NOT INTENDED TO COVER A CASE WHERE THEY WERE A
 24 DEFENDANT.
 25 THE COURT: AS A SHEER MATTER OF FACT, IT

1 DOES. SOME OF THE SAME INFORMATION WOULD BE RELEVANT TO
 2 BOTH.
 3 MS. SARFF: EXACTLY. YOUR HONOR, IF I
 4 MAY, THE JOB SITE AT ISSUE HERE IS THE MARATHON OIL
 5 REFINERY IN ROBINSON, ILLINOIS FOR THE TIME PERIOD OF
 6 1945 TO 1987. THE TIME PERIOD IN THE CASE THAT WE ARE
 7 NAMED IN IS FOR THE MARATHON OIL REFINERY IN ROBINSON,
 8 ILLINOIS. EVEN THOUGH IT'S NOT FOR THE ENTIRE 47-YEAR
 9 PERIOD, IT COVERS A SIGNIFICANT PORTION OF THAT. I
 10 THINK IT'S LIKE 1970 TO 1984. SO I WOULD ANTICIPATE
 11 THAT THE QUESTIONS THAT HE HAS ASKED OF US IN THE
 12 SUBPOENA ARE GOING TO BE VERY SIMILAR TO THE QUESTIONS
 13 HE IS GOING TO ASK OF US AS A DEFENDANT IN THE FERRIS
 14 CASE. ALSO IF YOU ADOPT --
 15 THE COURT: EXCUSE ME. ARE THERE ANY
 16 OTHER CASES IN WHICH MARATHON IS A DEFENDANT?
 17 MS. SARFF: NO. BUT IF YOU ADOPT
 18 PLAINTIFF'S ARGUMENT, IF YOU APPLY THIS TO OTHER
 19 DEFENDANTS, BASICALLY UNLESS THIS PARTICULAR DEFENDANT
 20 IS NAMED IN EVERY SINGLE MDL 875 CASE THAT IS PENDING
 21 BEFORE YOUR HONOR, THEN THEY COULD SERVE A SUBPOENA ON
 22 THEM AND GET THIS INFORMATION. SO LIKE LET'S SAY THERE
 23 ARE 500 MDL 875 CASES THAT ARE PENDING AND A DEFENDANT
 24 IS NAMED IN 495 OF THEM, BUT NOT FIVE CASES, THEY COULD
 25 SERVE A SUBPOENA IN ONE OF THOSE FIVE CASES. THEN THEY

1 WOULD HAVE TO ANSWER ALL THESE BURDENSOME QUESTIONS
 2 BEFORE -- BASICALLY BEFORE SEEING WHAT PLAINTIFF HAS
 3 FILED AS FAR AS THEIR RESPONSES TO INTERROGATORIES.
 4 THE COURT: LIKE ANY -- THIS INFORMAL
 5 ATTITUDE THAT I HAVE THAT ALLOWS EVERYBODY TO SORT OF
 6 WIGGLE THEIR WAY ALONG WITHOUT BEING TOO FORMAL ABOUT
 7 IT, THERE MUST BE -- WE DID NOT -- THERE IS NO PRIORITY
 8 OF DISCOVERY IN THE GENERAL FEDERAL RULES OF DISCOVERY
 9 ANYWAY. SO THE MERE FACT THAT -- WANT IT TO BE OUT OF
 10 WHACK IN TERMS OF THE ORDER OF THINGS IS NOT TECHNICALLY
 11 A REASON NOT TO HAVE YOU ANSWER THEM, YOUR CLIENT. BUT
 12 IN THE SCHEME OF HOW WE ARE MANAGING THIS CASE, YOU ARE
 13 CORRECT, WE HAVE BEEN FOCUSING ON THE OBVIOUS, ON THE
 14 PLAINTIFF FIRST AND DEFENSE. THAT SEEMS TO BE A LOGICAL
 15 THING TO DO. MR. MCCOY, DO YOU HAVE A SUGGESTION FOR
 16 THE CONUNDRUM THAT THIS HAS CREATED?
 17 DOES MARATHON HAVE LITIGATION COUNSEL
 18 AMONG THE DEFENSE HERE OR IS THAT YOUR OFFICE?
 19 MS. SARFF: THAT IS MY OFFICE.
 20 THE COURT: YOU ARE DEFENDING THE VERY
 21 CASE, THE SINGLETON CASE?
 22 MS. SARFF: FROM MY OFFICE.
 23 MR. MCCOY: THE EASIEST SOLUTION IT WOULD
 24 BE TO RESOLVE THE ONE CASE WHERE MARATHON IS A DEFENDANT
 25 SO THAT WOULD BE THE EASIEST WAY.

1 THE COURT: THAT IS ONE EASY WAY. LET ME
 2 SAY THIS.
 3 MR. MCCOY: BECAUSE IT'S HOLDING UP
 4 INFORMATION THAT WOULD BE PERTINENT TO A HUNDRED MORE
 5 CLIENTS.
 6 THE COURT: TAKE UP THE INFORMATION
 7 TOGETHER IN DISCUSSIONS AND SEE IF YOU CAN RESOLVE IT.
 8 IF YOU CAN'T, I CAN GIVE YOU A HAND. ASSUMING THE
 9 INTERROGATORIES OR REQUESTS SET FORTH IN THE SUBPOENA
 10 ARE NOT OVERLY BROAD OR ASK FOR PRIVILEGED INFORMATION
 11 OR OTHERWISE OBJECTIONABLE, MY ATTITUDE WOULD BE THAT
 12 MARATHON IS GOING TO HAVE TO PROVIDE THE INFORMATION
 13 SOMEHOW.
 14 MS. SARFF: YOUR HONOR, WE HAVE ALREADY
 15 SUBMITTED FORMAL OBJECTIONS PURSUANT TO RULE 45. AND WE
 16 HAVE SERVED THOSE ON PLAINTIFFS COUNSEL. AND I GUESS
 17 WHAT WE ARE WAITING ON NOW, YOU KNOW, IN ACCORDANCE WITH
 18 RULE 45 IS IF THEY WANT TO FILE A MOTION TO COMPEL, THEY
 19 CAN. BUT I'M GETTING FROM TODAY'S CONVERSATIONS THAT IT
 20 DOES NOT SOUND LIKE WE SHOULD FILE ANYTHING WITH THE
 21 COURT. BUT WE DO THINK THAT THEY ARE OVERBROAD. THEY
 22 COVER A 47-YEAR PERIOD AND ALL THEY HAVE DONE FOR US SO
 23 FAR IS GIVEN US A LIST OF LIKE 95 CASE CAPTIONS THIS
 24 APPLIES TO. WE DON'T KNOW ANYTHING ABOUT --
 25 THE COURT: I DON'T WANT YOU TO ARGUE THE

1 SUBSTANCE OF YOUR DISPUTE AT THIS POINT. I WANT YOU TO
 2 TAKE IT UP WITH MR. MCCOY OR HIS ATTORNEY DESIGNEE AND
 3 TRY TO WORK IT OUT, EITHER SETTLE THE CASE. PAY
 4 ATTENTION TO THE OBJECTIONS THAT YOU HAVE FILED AND SEE
 5 IF THEY AFFECT WHAT THE PLAINTIFF THINKS THEY ARE
 6 ENTITLED TO UNDER THE LAW. AND IF YOU CAN'T GET
 7 TOGETHER, THEN YOU CAN ORDER THE OBJECTIONS THAT YOU
 8 HAVE ALREADY FILED, ASSUMING THEY COVER THE PROBLEM.
 9 YOU CAN ASK ME TO RULE ON THEM AND I WILL SET UP A
 10 SCHEDULE.
 11 MS. SARFF: THANK YOU, YOUR HONOR.
 12 MR. FANNING: MY NAME IS DAVID FANNING.
 13 I REPRESENT EXXON MOBIL. WE ALSO RECEIVED A SUBPOENA.
 14 I UNDERSTAND THAT THE SUBPOENAS ARE QUASHED. WE ARE
 15 HAPPY TO HAVE ANY DISCUSSIONS ABOUT THE SCOPE OF THE
 16 CONTENT OF THOSE REQUESTS FOR DOCUMENTS. WE ARE A
 17 DEFENDANT IN MORE THAN ONE CASE, PROBABLY MANY MORE, BUT
 18 TO THE EXTENT THAT IT'S REQUESTING INFORMATION OF THE
 19 KIND REPRESENTED ON THE BOARD TODAY, I DON'T KNOW THAT
 20 THE DEFENDANTS ARE GOING TO FIND IT USEFUL IN THE
 21 CONTEXT OF THIS MEDIATION. I MEAN, WE ARE HAPPY TO LOOK
 22 AT THE CASES THAT THEY ARE ASKING ABOUT IN TERMS OF WHO
 23 ARE THE PLAINTIFFS, WHEN DID THEY WORK THERE, AND WHERE
 24 DID THEY WORK. AND WE MIGHT BE ABLE TO FOCUS OUR
 25 EFFORTS AT IDENTIFYING THOSE DOCUMENTS TO BE RESPONSIVE.

1 I THINK THAT IS THE KIND OF CONVERSATION WE WOULD BE
 2 MORE THAN WILLING TO HAVE WITH THE PLAINTIFFS COUNSEL TO
 3 LOOK FOR THE INFORMATION.
 4 THE COURT: I WANT PLAINTIFFS' COUNSEL TO
 5 ENCOURAGE ANYBODY THAT -- MOST OF THE THIRD PARTIES WHO
 6 HAD OBJECTIONS WERE RESOLVED.
 7 MR. MCCOY: RIGHT. JUDGE.
 8 THE COURT: I WANT YOU TO GET THESE TWO
 9 RESOLVED, TOO.
 10 MR. MCCOY: IN MY NOTES THIS EXXON MOBIL
 11 IS ONE OF THE ONES UNDER DISCUSSION WITH JONATHAN
 12 FRELICH, WHO'S AN ATTORNEY IN OUR OFFICE HANDLING THIS
 13 SPECIFIC ONE. OF COURSE, THE ATTORNEYS IN OUR OFFICE
 14 HANDLING THE SUBPOENAS, THEY ARE BRINGING THESE
 15 QUESTIONS TO ME SO WE WILL GIVE CONSISTENT DIRECTION.
 16 THE COURT: YOU'VE GOT TO GET SOME GOOD
 17 COMMUNICATION AND KEEP IT UP BECAUSE SOME OF THE THIRD
 18 PARTIES AS YOUR ASSOCIATE HAS SAID -- WE ARE NOT GOING
 19 TO CHANGE ANYTHING. YOU HAVE TO COME TO THE DEPOSITION.
 20 THAT IS NOT THE WAY YOU ARE GOING TO GET IT TAKEN CARE
 21 OF.
 22 MS. SARFF, DID I QUASH THE SUBPOENA WITH
 23 RESPECT TO YOUR CLIENT?
 24 MR. MCCOY: YOU DID. I THINK YOU
 25 STAYED --

1 THE COURT: ALL OF THEM WERE WITHIN A FEW
2 DAYS THAT I LEARNED ABOUT THEM SO I QUASHED THEM RIGHT
3 AWAY.

4 MR. MCCOY: MY UNDERSTANDING IS YOU
5 STAYED THESE, JUDGE.

6 THE COURT: WHATEVER I DID. I JUST WANT
7 TO MAKE SURE.

8 MS. SARFF: THE SUBPOENA TO MY CLIENT AS
9 FAR AS I KNOW HAS NOT BEEN QUASHED OR STAYED. IN FACT,
10 WE GOT A CORRESPONDENCE FROM CASCINO VAUGHAN SAYING THEY
11 FULLY EXPECTED US TO COMPLY WITH THE SUBPOENA, AND THAT
12 DATE WAS JANUARY 14TH. WE CORRESPONDED BACK TO THEM
13 SAYING WE WERE NOT GOING TO PRODUCE ANYBODY BECAUSE WE
14 HAD FILED OBJECTIONS. AND IF THEY WANT TO PURSUE WITH A
15 MOTION TO COMPEL PURSUANT TO RULE 45, THEN THAT IS THE
16 WAY TO GO.

17 MR. MCCOY: AND THOSE ARE ALL PART OF THE
18 DISCUSSIONS. I MEAN WE DID NOT PUSH ANYBODY TO ACTUALLY
19 DO IT ON THAT DATE.

20 THE COURT: IF YOU CAN MAKE A RULING
21 REPORT TO MR. LANG, MY SENIOR LAW CLERK, BY THE 21ST OF
22 FEBRUARY, A COMPREHENSIVE LETTER REPORT ON THE STATUS OF
23 THESE MATTERS, ALL OF THE THIRD PARTY OR NONPARTY
24 SUBPOENAS.

25 MR. MCCOY: THAT IS FINE, JUDGE.

1 MS. SARFF: JUST TO CLARIFY, IS THE
2 SUBPOENA AS TO MY CLIENT QUASHED ALSO OR STAYED?

3 THE COURT: I'M NOT GOING TO -- I WILL
4 LOOK AT IT. I DON'T HAVE THE ONES I DID QUASH IN FRONT
5 OF ME. SO I DON'T KNOW WHAT THE TECHNICAL LANGUAGE IS
6 THAT I FOUND IT NECESSARY TO USE. BUT THE PLAINTIFF IS
7 NOT GOING TO PURSUE THE FILING OF SOME MOTION WITH ME
8 AGAINST MARATHON FOR NOT RESPONDING TO THAT SUBPOENA.
9 BUT IF YOU WANT -- I DON'T HAVE THEM IN FRONT OF ME, SO
10 I DON'T REMEMBER MARATHON.

11 I ISSUED AN ORDER ON JANUARY 13TH AND THE
12 CAPTIONS, THE NAMES OF THE DEFENDANTS -- RESPONDENTS TO
13 THE SUBPOENAS WERE EXXON MOBIL, NEXTERA ENERGY POINT
14 BEACH, MILLERCOORS, NEWPAGE WISCONSIN SYSTEMS, INC. AND
15 BUNGE MILLING.. THOSE ARE THE ONES THAT I STAYED
16 WITHOUT PREJUDICE. MR. LANG, IS THIS THE ONLY ORDER I
17 ISSUED ON THAT?

18 THE CLERK: THAT'S CORRECT.

19 THE COURT: YOUR CLIENT WAS NOT IN THIS
20 FOR SOME REASON.

21 MS. SARFF: I WAS UNAWARE THAT WAS FILED.

22 THE COURT: IT WAS NOT BROUGHT TO MY
23 ATTENTION WHEN I ISSUED THAT ORDER. I WOULD HAVE DONE
24 THE SAME THING.

25 MR. MCCOY: WE HAVE NO OBJECTION

1 EXTENDING THAT TO MARATHON, JUDGE.

2 THE COURT: WE WILL FIND A COPY OF THE
3 OBJECTIONS AND ISSUE AN ORDER STAYING WITHOUT PREJUDICE.

4 MS. SARFF: THAT IS FINE, AS LONG -- IF
5 HE IS AGREEABLE TO EXTENDING THAT TO MARATHON, THAT
6 JANUARY 13TH ORDER, WE ARE FINE WITH THAT.

7 THE COURT: I WILL DO IT. IT'S A SHORT
8 ORDER.

9 MS. SARFF: THANK YOU, YOUR HONOR.

10 THE COURT: WERE THE OBJECTIONS FILED ON
11 THE DOCKET OR JUST SERVED ON THE OTHER SIDE?

12 MS. SARFF: WE JUST SERVED THEM ON
13 PLAINTIFF'S COUNSEL.

14 THE COURT: SEND ME A COPY.

15 MS. SARFF: SURE.

16 MR. MCCOY: JUDGE, CAN I ASK THAT THE
17 SUBPOENA STATUS REPORT BE MOVED FROM FEBRUARY 21 TO
18 ABOUT A WEEK LATER SO WE CAN DEVOTE ALL OF OUR TIME ON
19 THE INTERROGATORIES THAT ARE DUE THAT DATE.

20 THE COURT: SURE. WHAT IS THE DATE A
21 WEEK LATER, 28TH?

22 MR. MCCOY: 28TH IS FINE.

23 THE COURT: THE LANGUAGE IS NOT EXACTLY
24 THE SAME, BUT WE DID HANDLE THE SUBSTANCE OF NUMBER ONE
25 UNDER CAPITAL LETTER D, NUMBER ONE. THAT IS WHAT WE

1 JUST FINISHED. LANGUAGE IS A LITTLE STRANGE, BUT WE ARE
2 GOING TO TAKE AN HOUR'S RECESS. BE BACK AT 1:30. IT'S
3 12:30 NOW. BACK AT 1:30.

4 - - -

5 (LUNCH BREAK TAKEN.)

6 THE CLERK: ALL RISE.

7 THE COURT: WELCOME BACK, EVERYBODY.
8 BE SEATED.

9 THE NEXT ITEM TO FINISH UP WITH 2 D IS
10 THE DEPOSITIONS OF WITNESSES TO PRESERVE TESTIMONY.
11 THAT IS A PLAINTIFF'S POINT, I GATHER. TELL ME A LITTLE
12 BIT ABOUT THAT.

13 MR. MCCOY: RIGHT. JUDGE, SO THIS IS A
14 NEW ITEM AND IT HAS TO DO WITH THE SAME CONCEPT THAT
15 THERE IS EVIDENCE OUT THERE, WE DON'T WANT IT TO BE
16 UNAVAILABLE FOR THIS PROCEEDING. AND IT ALSO HAS TO DO
17 WITH THE CONCEPT THAT EVERY YEAR THERE'S A CERTAIN
18 AMOUNT OF EVIDENCE THAT IS LOST BECAUSE THESE WITNESSES
19 PASS AWAY AND ARE GETTING OLDER. OBVIOUSLY MOST OF
20 THESE PEOPLE ARE IN THEIR 70S. SOME ARE IN THEIR 80S.
21 SO THAT IS OUR CONCERN.

22 NOW, AS IT STANDS RIGHT NOW AS THIS COURT
23 WILL PASS WE HAVE NOT BEEN ABLE TO UNDERTAKE DISCOVERY
24 OTHER THAN IF WE MADE A MOTION IN A SPECIFIC CASE TO TRY
25 TO GET THAT DISCOVERY. WHAT WE WOULD LIKE TO DO IS TO

1 PRESERVE THE TESTIMONY OF CERTAIN KEY WITNESSES AND THAT
2 IS PROBABLY SOMEWHERE AROUND ABOUT A HUNDRED DIFFERENT
3 PERSONS THAT WE HAVE WHO ARE WITNESSES. WE DON'T WANT
4 TO LOSE THEIR TESTIMONY IN THE EVENT THAT THINGS DON'T
5 GET COMPLETED THROUGH THIS LITIGATION. SO -- AND THAT
6 IS BASED ON THE JOB SITES. I SAID BEFORE WE HAD A
7 THOUSAND JOB SITES IN OUR CASES. SO WE ARE TALKING
8 ABOUT A HUNDRED WITNESSES. WE ARE NOT REALLY TALKING
9 PROPORTIONALLY THAT MUCH OF OUR CASE WORK INVOLVED HERE.

10 THE COURT: THESE POTENTIAL WITNESSES ARE
11 NOT PLAINTIFFS WHO ARE SICK OR GOING TO DIE.

12 MR. MCCOY: SOME OF BOTH. THE SECOND
13 CATEGORY IS PLAINTIFFS WHO ARE NOT IN GOOD HEALTH. TWO
14 CATEGORIES ARE WITNESSES ABOUT THE JOB SITES AND THE
15 OTHER CATEGORY IS THE ONE THAT YOUR HONOR JUST
16 MENTIONED, WHICH ARE THE PLAINTIFFS, THE VICTIMS THAT
17 ARE NOT IN GOOD HEALTH THAT ARE ALIVE.

18 THE COURT: HOW MANY OF THOSE DO YOU
19 THINK THERE ARE?

20 MR. MCCOY: IN TOTAL BETWEEN THE TWO
21 GROUPS ABOUT 100. I MEAN, WE OBVIOUSLY COULD NOT DO
22 THEM ALL. SO I'M SAYING IF WE LIMIT IT TO 100, THAT
23 WOULD BE A GOOD START. AND I DON'T EXPECT THESE TO BE
24 DONE OVERNIGHT. WE CAN SET UP AND DO -- MANY OF THEM
25 ARE CLOSE BY. WE CAN DO SEVERAL WITHIN THE SAME WEEK

1 EASILY. AND YOU KNOW THERE SHOULD BE SOME TIME -- I
2 THINK THERE SHOULD BE SOME TIME LIMIT ON IT. BUT OUR
3 FIRM HAS DONE AS MANY AS FOUR, FIVE DEPOSITIONS AT ONE
4 JOB SITE LOCATION IN THE SAME DAY IN OTHER CASES. WHEN
5 I SAY A HUNDRED, IT'S REALLY ONLY A SMALL PORTION BUT
6 IT'S ONES THAT WE CAN IDENTIFY AS THE MOST IMPORTANT FOR
7 US. THEY WOULD BE ILLINOIS AND WISCONSIN.

8 THE COURT: MR. RILEY.

9 MR. RILEY: ON BEHALF OF MY CLIENT, YOUR
10 HONOR, WE HAVE NO OBJECTION PROVIDED WE ARE GIVEN THE
11 KIND OF SPECIFIC NOTICE ABOUT THE PROPOSED USE OF THE
12 TESTIMONY, TO GIVE US AN OPPORTUNITY ADEQUATELY TO CROSS
13 EXAMINE. BY THAT I MEAN, WE NEED TO KNOW -- IF THEY
14 WANT TO CALL SOMEBODY ABOUT A SO-CALLED JOB SITE, AS TO
15 WHICH PLAINTIFFS DO THEY CLAIM THAT TESTIMONY IS GOING
16 TO APPLY. BECAUSE THE CROSS EXAMINATION WILL NEED TO
17 EXPLORE WHETHER WHAT THIS PERSON IS SAYING ABOUT THE JOB
18 SITE HAS ANYTHING TO DO WITH A PARTICULAR PLAINTIFF.
19 THE KIND OF JOB SITES THAT MR. MCCOY HAS IDENTIFIED ARE
20 MASSIVE, SEVERAL SQUARE MILES IN SOME INSTANCES. SO THE
21 IDEA THAT WE ARE GOING TO TROT A SO-CALLED CO-WORKER OUT
22 TO TESTIFY ABOUT WHAT PRODUCT WAS AT SOME PLACE AT SOME
23 TIME ON THAT JOB SITE, THAT IS NOT ADEQUATE NOTICE TO US
24 AS TO WHAT THE ALLEGATION IS ABOUT WHY IT'S RELEVANT IN
25 A PARTICULAR CASE SO THAT WE HAVE ADEQUATE GROUNDS TO

1 CROSS EXAMINE. AND I THINK THAT IS THE IMPORTANT DUE
2 PROCESS ISSUE HERE.

3 IF WE ARE GIVEN ADEQUATE NOTICE AS TO THE
4 PROPOSED USE OF THE TESTIMONY, IN WHICH CASE IS IT
5 ALLEGED BE RELEVANT, THEN MAYBE WE CAN CROSS EXAMINE IF
6 WE'RE GIVEN THE RIGHT FOUNDATION INFORMATION. BUT IF WE
7 ARE JUST TALKING ABOUT CALLING PEOPLE OUT WHO ARE GOING
8 TO IDENTIFY SOME PRODUCTS THEY THINK WERE AT SOME JOB
9 SITE AT SOME POINT IN TIME WITH NO REFERENCE TO A
10 SPECIFIC PLAINTIFF, WE CAN'T CROSS EXAMINE ADEQUATELY.
11 SO WE MAY BE PRESERVING WHAT THE PLAINTIFFS WANT IN THE
12 WAY OF TESTIMONY, BUT NOT WHAT THE DEFENDANTS HAVE TO
13 HAVE.

14 THE COURT: MR. MCCOY.

15 MR. MCCOY: PROVIDING NOTICE ABOUT WHICH
16 DEFENDANTS WE EXPECT THE TESTIMONY TO PERTAIN TO, THAT
17 IS FINE. WE HAVE DONE THAT BEFORE.

18 THE COURT: AND HOW ABOUT -- MR. RILEY
19 HAS TO KNOW WHICH PLAINTIFF IT REFERS TO, WHICH
20 INDIVIDUAL WORKER TO TAKE A DEPOSITION OF.

21 MR. MCCOY: RIGHT. WELL, KNOWING WHICH
22 PLAINTIFF -- I CAN TELL -- I CAN SAY WHICH JOB SITE IT
23 PERTAINED TO, BUT ON SOME OF THESE PLAINTIFFS, IT'S NOT
24 -- OUR INFORMATION LEVEL ON SOME OF THE PLAINTIFFS IS
25 NOT WHERE THEY SPECIFICALLY WORKED AT. WE DON'T HAVE

1 THAT BECAUSE A LOT OF THOSE PLAINTIFFS OR VICTIMS ARE NO
2 LONGER WITH US BUT WE DO KNOW WHAT JOB SITES THEY WORKED
3 AT. SO I WOULD JUST PROPOSE THAT IT BE -- THAT WE WOULD
4 ADVISE WHICH JOB SITE IT IS PERTINENT TO AND WHICH
5 DEFENDANT IT'S PERTINENT TO, OR DEFENDANTS, AND THAT
6 WOULD BE THE INFORMATION THAT WE WOULD PROVIDE IN
7 ADVANCE.

8 THE COURT: I DON'T THINK IT'S FAIR TO
9 PRESERVE TESTIMONY OF A WITNESS TO A WORKER'S EXPOSURE,
10 THIS IS THE INFERENCE THAT WAS DRAWN, ALLEGED EXPOSURE
11 TO THE COMPANY'S PRODUCTS THAT ARE NAMED IN THE NOTICE
12 OF THE DEPOSITION IF YOU DON'T KNOW WHAT PLAINTIFFS IT
13 REFERS TO. HOW CAN THEY FIGURE OUT AND ASK QUESTIONS OF
14 THE FOREMAN OR CO-WORKER ABOUT ANYTHING BEYOND THE FACT
15 THAT THEY SAW OWENS-CORNING'S NAME ON A BALE OF
16 SOMETHING, AND THAT IS IT. IT DOES NOT TIE INTO ANY
17 PARTICULAR PLAINTIFF'S CASE.

18 MR. MCCOY: WE CAN IDENTIFY THE
19 PLAINTIFFS WHO WORKED AT THAT JOB SITE.

20 THE COURT: IT SOUNDS LIKE YOU NEED TO
21 IDENTIFY THE PLAINTIFFS AS TO WHOSE CASES THE WITNESS IS
22 BEING DEPOSED WILL BE OFFERING. THAT IS A LITTLE
23 WRINKLE ON WHAT YOU JUST SAID. I'M JUST THINKING OUT
24 LOUD HERE.

25 MR. MCCOY: I DON'T SEE IT'S A PROBLEM

1 WITH THAT WRINKLE, YOUR HONOR. THE MORE I THINK ABOUT
2 IT, THAT IS FINE. WE WILL IDENTIFY THE PLAINTIFFS TO
3 WHOSE CASES THAT IT WOULD PERTAIN. WE WILL IDENTIFY THE
4 DEFENDANTS THAT ARE EXPECTED TO BE COVERED IN THE
5 TESTIMONY AND THE JOB SITES.

6 THE COURT: HOW ABOUT THE PERIOD OF TIME?
7 IF I WERE THE DEFENSE I WOULD BE WANTING TO TALK TO
8 SOMEONE AT THE COMPANY OR SEARCH DEPOSITIONS TO FIND
9 PEOPLE WHO WORKED THERE IN ORDER TO PREPARE FOR THE
10 DEPOSITION.

11 MR. MCCOY: TIME PERIOD IS FINE. WE CAN
12 ADD THAT, TOO.

13 THE COURT: DEFENSE HAVE ANY FURTHER
14 COMMENTS?

15 MR. EVERT: I THINK THAT WILL BE FINE,
16 YOUR HONOR.

17 THE COURT: MR. MCCOY, I WOULD LIKE YOU
18 TO WRITE A LETTER TO THE DEFENSE LIAISON COMMITTEE, PUT
19 DOWN EVERYTHING WE TALKED ABOUT HERE, CONCLUSIONS WE'VE
20 REACHED IN ANSWER TO MY QUESTIONS AND PROPOSE A -- SEND
21 ME A COURTESY COPY OF THAT LETTER AND PROPOSE A SCHEDULE
22 OF AT LEAST THE PARAMETERS OF END OF APRIL OR END OF
23 MARCH OR SOME -- YOU OUGHT TO TAKE THE IMPORTANT ONES I
24 SUPPOSE FIRST BECAUSE THEY MAY LEAVE TOWN OR LEAVE US
25 ALL. AND PICK A PERIOD OF TIME WHEN YOU WILL FINISH UP

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1 THE FIRST PHASE OF IT. WE WILL MAKE IT INTO TWO PHASES,
2 SEE HOW THINGS GO. SEE HOW IT LOOKS AFTER SEVERAL
3 DEPOSITIONS ARE TAKEN. MAKE A PROPOSAL.

4 MR. EVERT: THAT IS WHAT I WAS GOING TO
5 SAY, I THINK THAT IS A GOOD SUGGESTION. WHAT WE ARE
6 TRYING TO AVOID HERE IS A COLOSSAL WASTE OF TIME. OUR
7 VIEW IS, A CO-WORKER WHO STANDS UP AND SAYS THERE WAS
8 CERTAIN PRODUCTS AT A JOB SITE WITHOUT ANY REFERENCE TO
9 ANY PLAINTIFF AND HIS EXPOSURE TO THOSE PRODUCTS IS
10 WORTHLESS.

11 THE COURT: THIS WHOLE PROCEDURE EVEN
12 THOUGH IT HAS BEEN TIME CONSUMING AND PROLONGED BEYOND
13 WHAT I THINK IS PLEASANT -- I ENJOY BEING WITH YOU FOLKS
14 BUT THIS HAS TAKEN US A LONG TIME TO GET IT READY TO
15 MEDIATE. WHILE WE HAD SOME HURDLES TO CROSS BEFORE WE
16 GOT THERE, I THINK IT CLEARED THE AIR A GOOD DEAL AND
17 THERE IS MORE OF THAT TO BE DONE. BUT I THINK IF THESE
18 WITNESSES CAN'T TIE ASBESTOS EXPOSURE TO FRIABLE
19 ASBESTOS OR -- I KNOW THAT THERE ARE MOLECULES OF
20 ASBESTOS THAT YOU CAN'T SEE WITH THE NAKED EYE, BUT THE
21 JURY CAN'T SEE THEM EITHER. SO IT'S RARE TO TRY A CASE
22 WITH -- THERE IS NOT A CLOUD OF WHITE SOMEHOW. UNLESS
23 THE WITNESS CAN TIE -- CAN SAY SOMETHING ABOUT EXPOSURE
24 OF A PARTICULAR PLAINTIFF AND WHEN IT HAPPENED, IT'S OF
25 NO USE TO THE -- NOT MUCH USE TO THE MEDIATION OF THAT

1 CASE. YOU MIGHT HAVE ANOTHER WITNESS SOMEWHERE. WE
2 SHOULD NOT BE TAKING -- IT'S A DEVIATION FROM OUR GOAL
3 TO BE DOING EVEN THIRD PARTY OR DEPOSITIONS TO PRESERVE
4 TESTIMONY. IT JUST LENGTHENS OUR WORK. BUT IT'S DUE
5 PROCESS FOR THE PLAINTIFF AND WE HAVE TO HAVE A BASIS ON
6 WHICH TO MAKE RESPONSIBLE DECISIONS DURING THE ACTUAL
7 MEDIATION OF A GIVEN CASE. PUT DOWN YOUR UNDERSTANDING
8 OF WHAT WE HAVE COME TO, MR. MCCOY, AND SEND A LETTER TO
9 DEFENSE LIAISON COMMITTEE AND ASK THEM TO AGREE TO IT
10 AND SEND ME A COURTESY COPY OF IT.

11 MR. MCCOY: THAT IS FINE, JUDGE.

12 THE COURT: MY INTENTION IS TO -- IF I
13 DON'T LIKE SOMETHING IN THE WRITING, IN THE PROPOSAL, I
14 WILL CALL YOU AND TAKE IT UP WITH YOU, THEN YOU TAKE IT
15 UP WITH THE DEFENSE, WE WILL GET IT ALL SORTED OUT.
16 THEN WE WILL HAVE A PIECE OF PAPER WE CAN RELY ON.

17 MR. MCCOY: OKAY. SHOULD WE HAVE A TIME
18 FRAME THEN TO SEND THIS LETTER?

19 THE COURT: WELL --

20 MR. MCCOY: A WEEK?

21 THE COURT: A WEEK IS FINE. YOU KNOW
22 WHAT YOUR WITNESSES ARE DOING OR NOT DOING.

23 THE OTHER POINT I WANTED TO MAKE WAS,
24 WHEN I SAW THIS ITEM I SAID TO MYSELF, WHAT DEFENSE IS
25 THERE TO -- OTHER THAN THE PROCEDURAL POSTURE OF THE

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1 CASE BEING IN MEDIATION, WHAT IS THE DEFENSE TO A --
2 PROCEDURAL DEFENSE TO THE PLAINTIFF TAKING THEIR
3 TESTIMONY OF A GOING WITNESS, WHETHER IT'S THE PLAINTIFF
4 OR ANYBODY ELSE, UNLESS THERE IS A FIGHT ABOUT WHETHER
5 THEY ARE REALLY SICK OR SOMETHING LIKE THAT. ABSENT
6 THAT, I THINK THE -- PRESUMING THAT THE PROPOSED
7 TESTIMONY HAS RELEVANCY WHEN THE PLAINTIFF IN A
8 PARTICULAR CASE WORKED THERE, THERE IS NOT MUCH YOU CAN
9 DO ABOUT IT. PLAINTIFF SAYS -- THE LAWYER HAS A DUTY TO
10 PRESERVE TESTIMONY, DUTY TO HIS CLIENT TO PRESERVE
11 TESTIMONY. THE DEFENSE OR THE MEDIATOR CAN RIGHT LIKE
12 HECK ON THIS, BUT I THINK IT'S HIS JOB TO DO IT. WE
13 WILL TWEAK AS IT IS SOMETIMES SAID.

14 THAT'S THE -- THE 2ND OF FEBRUARY IS A
15 WEEK FROM TOMORROW, IS IT?

16 MR. MCCOY: THAT IS FINE.

17 THE COURT: I THINK CONSISTENT WITH MY
18 THINKING ABOUT THE PURPOSE OF THESE DEPOSITIONS AND
19 RESPONSIBILITIES, A SHORT BUT ENCOMPASSING STATEMENT AS
20 TO WHY THIS TESTIMONY HAS TO BE TAKEN SHOULD BE IN THE
21 NOTICE AS WELL. DEPONENT IS SUFFERING FROM X, Y, Z AND
22 WHATEVER IS GOING ON ON HIS MEDICAL LIFE OR HERS. THANK
23 YOU.

24 MR. MCCOY: OKAY.

25 MR. RILEY: YOUR HONOR, COULD WE ADD ONE

1 OTHER NOTICE PROVISION? IT'S VERY, VERY COMMON IN
2 JURISDICTIONS WITH ASBESTOS LITIGATION AROUND THE
3 COUNTRY TO HAVE THE PLAINTIFFS WHEN THEY IDENTIFY THIS
4 WORKER IS GOING TO GIVE PRODUCT EXPOSURE TESTIMONY AS TO
5 A SPECIFIC PLACE THAT WILL RELATE TO SPECIFIC DEFENDANTS
6 AND TIME FRAMES, THAT IT IS UNDERSTOOD BY EVERYONE
7 INCLUDING THE COURT THAT IF YOU'RE A DEFENDANT WHO'S NOT
8 IDENTIFIED IN THE NOTICE, IT IS NOT NECESSARY FOR YOU TO
9 GO TO THE DEPOSITION ESSENTIALLY TO ESTABLISH A
10 NEGATIVE. THAT IS, THERE IS A STIPULATION ASSOCIATED
11 WITH THIS, THAT IF YOU ARE NOT IDENTIFIED AS SOMEBODY
12 WHO IS GOING -- WHOSE PRODUCTS ARE GOING TO BE
13 IDENTIFIED IN THE DEPOSITION, YOU NEED NOT ATTEND AND
14 THERE WON'T BE ANY TESTIMONY ADDUCED TO IDENTIFY YOU AT
15 THIS DEPOSITION. NOW, IF THERE IS SOME LATER DISCOVERED
16 FACT AND NOTICE CAN BE PROVIDED OR ANOTHER DEPOSITION
17 CAN BE TAKEN, BUT IT WILL AVOID EVERYBODY IN THIS ROOM
18 HAVING TO SHOW UP NEEDLESSLY AT DEPOSITIONS TO ASK
19 QUESTIONS TO ESTABLISH A NEGATIVE THAT OUGHT TO BE
20 ESTABLISHABLE BEFORE WE START.
21 THE COURT: IT BEGINS TO BE ESTABLISHED
22 BY THE NOTICE ITSELF IF IT DOES NOT CONTAIN THAT
23 PARTICULAR CLIENT'S NAME. THERE ISN'T A PROBLEM WITH
24 THAT, IS THERE, MR. MCCOY?
25 MR. MCCOY: NO. NOT A PROBLEM WITH THAT,

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1 JUDGE.
2 THE COURT: PUT THAT IN YOUR NOTICE, TOO.
3 WE BETTER MOVE ON OR WE WILL HAVE MORE
4 THINGS IN THE NOTICE.
5 CAPITAL D NUMBER 3. I IMPLIED A POSSIBLE
6 SOLUTION. I DON'T KNOW WHETHER YOU AGREE WITH ME OR
7 NOT. I WAS THINKING OF THE KEY DEFENDANT IN A
8 DEPOSITION LIKE THIS WOULD BE THE 30(B)(6) OR SOMETHING
9 LIKE THAT. SOMEONE WOULD BRING IN THE RECORDS OR TURN
10 OVER THE RECORDS WITHOUT A DEPOSITION. THAT HAPPENS.
11 WHATEVER HAPPENS IS JUST WHAT I JUST SAID. EVERYONE WHO
12 GETS A NOTICE OF IT WILL KNOW THAT THIS IS A WITNESS OF
13 THE XYZ COMPANY. AND ALMOST EVERYBODY IN THE COUNTRY
14 KNOWS THE NAMES OF ANYBODY THAT IS EVEN ON THE -- OUT ON
15 THE PERIPHERY OF ASBESTOS LITIGATION. SO YOU DON'T NEED
16 MUCH TO DECIDE WHETHER TO GO TO THE DEPOSITION, BUT IT
17 OCCURRED TO ME THAT SOMEBODY MAY WANT TO USE THAT
18 DEPOSITION FOR SOME PURPOSE IN A PARTICULAR CASE THAT
19 DID NOT GO TO THE DEPOSITION.
20 I'M TRYING TO THINK OF A WAY TO ALLOW
21 THAT TO GO FORWARD SO YOU DON'T HAVE A ROOMFUL OF PEOPLE
22 AT A RECORDS DEPOSITION, IF YOU HAVE ONE, WITH THE IDEA
23 THAT THE PARTY THAT DOES NOT WANT TO GO TO THE
24 DEPOSITION WILL BE ABLE TO GET A COPY OF THE TRANSCRIPT
25 AND COPY OF THE PAPERS PRODUCED AT LEAST TO LOOK AT. BY

1 NOT ATTENDING THE DEPOSITION THAT PARTICULAR PARTY COULD
2 USE THE TRANSCRIPT FOR ANY PROPER PURPOSE. I DON'T KNOW
3 WHAT PROPER PURPOSE MEANS, BUT IT MAY INCLUDE ANYTHING
4 FROM I CAN'T ID MY CLIENT SO LOOK AT THIS, JUDGE
5 (INDICATING) OR SOMETHING ELSE. I DON'T KNOW IF I'M
6 MAKING ANY SENSE. I DOVE RIGHT INTO THIS WITHOUT ASKING
7 FOR YOUR HELP. I DON'T KNOW WHO PUT THIS IN THERE.
8 THE CLERK: YOU DID.
9 THE COURT: I PUT IT IN? CAUGHT AGAIN.
10 I PUT IN THE IDEA, YEAH.
11 MR. EVERT: I DON'T THINK THAT IS
12 DIFFICULT IN PRACTICE, YOUR HONOR. WHAT YOU ARE REALLY
13 TALKING ABOUT IS THE DEFENDANTS. THE PLAINTIFFS WILL
14 ALWAYS BE THERE. SO IT'S A QUESTION OF DEFENDANTS'
15 CAPABILITY TO USE. I THINK IN PRACTICE THAT IS NOT
16 REALLY AN ISSUE. PLAINTIFFS TYPICALLY HAVE NOT OBJECTED
17 TO THAT SO I DON'T THINK WE HAVE A PROBLEM THERE.
18 THE COURT: THERE ARE DEPOSITIONS IN
19 OTHER CASES THAT FIND THEIR WAY INTO COURTROOMS. I JUST
20 WANTED TO TRY TO KEEP SOME CONTROL OVER IT BY MY
21 SUGGESTION. IF IT'S SOMETHING THAT EVERYONE CAN AGREE
22 TO, THEN YOU DON'T NEED MY HELP.
23 MR. EVERT: I THINK WE ARE TALKING ABOUT
24 THE GENERAL LIMITS, THE APPLICATION OF THESE CASES,
25 DEPOSITIONS TAKEN IN THESE CASES APPLYING TO THESE CASES

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1 IS WHAT --
2 THE COURT: YES.
3 MR. EVERT: I THINK THAT IS NOT AN ISSUE.
4 THE COURT: THERE WILL BE ISSUES THAT I
5 MENTIONED IF ANYBODY WANTS TO BRING A DEPOSITION IN FROM
6 SOME OTHER CASE, WHO'S IN THE COURTROOM TRYING ONE OF
7 THESE CASES. THAT IS A DIFFERENT SUBJECT.
8 MR. MCCOY, DO YOU HAVE ANY COMMENTS ON
9 THIS WHOLE THING?
10 MR. MCCOY: THIS IS -- AS WRITTEN, IT'S
11 OKAY.
12 THE COURT: I DIDN'T CONSIDER IT TO BE A
13 FINAL DRAFT, THAT IS FOR SURE. I PUT THE WORD PROPER
14 PURPOSE IN A MINUTE AGO AND THEN THIS GROUP OF CASES HAS
15 SHOWN UP.
16 EXCUSE ME JUST A MINUTE, PLEASE.
17 (PAUSE.)
18 THE COURT: WOULD SOMEONE ON THE DEFENSE
19 LIAISON COMMITTEE TAKE THE RESPONSIBILITY OF PUTTING
20 THIS SMALL ITEM INTO A FORM OF A STIPULATION?
21 MR. EVERT: SURE, OF COURSE, YOUR HONOR.
22 BE GLAD TO.
23 THE COURT: BY THE 3RD OF FEBRUARY.
24 MR. EVERT: YES, YOUR HONOR.
25 THE COURT: THAT IS A WEEK AND A DAY.

1 AND THEN SINCE WE ARE GOING TO HAVE TROUBLE WITH NOT
2 FILING THINGS WITH THE CLERK'S OFFICE I WOULD SUGGEST
3 THAT YOU HAVE MORE THAN ONE ORIGINAL SO YOU CAN -- IF
4 SOMEBODY NEEDS IT LATER SOMEONE WILL HAVE IT.

5 MR. EVERT: WE WILL DO SO, YOUR HONOR.

6 THE COURT: HAVE THE PLAINTIFFS GET IT
7 BACK TO ME AND HAVE IT SIGNED BY FEBRUARY 10TH. THAT IS
8 A WEEK AFTER THE STIPULATION IS SENT TO MR. MCCOY.

9 ROMAN NUMERAL III A, WASN'T THERE
10 SOMETHING DONE RECENTLY THAT COVERS THIS? I REMEMBER
11 GETTING A COUPLE OF LETTERS WITH LONG LISTS OF CASES ON
12 THEM.

13 MR. MCCOY: WE ARE ON III A?

14 THE COURT: III A.

15 MR. MCCOY: THERE HAD BEEN A LIST, RIGHT,
16 THAT HAS BEEN PREPARED AND SO ON AND MR. CASCINO, MIKE
17 CASCINO HAS THAT HERE, JUDGE.

18 MR. CASCINO: YOUR HONOR, I TENDERED A
19 COPY OF THIS TO YOUR LEGAL ASSISTANT AND IT'S -- I ALSO
20 GAVE COPIES TO THE DEFENSE LIAISON COMMITTEE.

21 THE COURT: I THOUGHT I SAW THEM COME IN,
22 BUT I DID NOT FOCUS ON THEM.

23 MR. CASCINO: IT'S A STATUS REPORT ON
24 WHERE WE ARE AT. MR. VAUGHAN ASKED ME -- AND HE
25 APOLOGIZES, BY THE WAY, FOR NOT BEING HERE, BUT THERE

1 SHOULD EXPLAIN WHAT THE CRITERIA WERE FOR PUTTING IT ON
2 THAT LIST. IT DOES NOT TO HAVE BE DETAILED BUT
3 SOMETHING. I DON'T KNOW WHAT WE ARE GOING TO DO WITH
4 THEM YET, BUT WE NEED THE BREAKDOWN. YOU WILL SEND THEM
5 TO ME AND TO THE DEFENSE LIAISON COMMITTEE. MR.
6 CASCINO, YOU WILL DO THAT.

7 MR. CASCINO: YES. NO PROBLEM. I
8 ACTUALLY SAW IT YESTERDAY, BUT I DIDN'T LIKE THE WAY THE
9 REPORT WAS DONE. IT'S GOING TO GO OUT BEFORE THE 11TH.

10 THE COURT: THANK YOU.

11 HOW ABOUT ROMAN NUMERAL IV. PLAINTIFF
12 HAS IDENTIFIED THE INDIANA CASES THAT THEY ARE WILLING
13 TO DISMISS WITHOUT PREJUDICE. AND THAT WOULD BE DONE BY
14 THE WAY WE DID IT LAST SUMMER IN A RULE TO SHOW CAUSE
15 AND THEN A RESPONSE WHICH WILL CONTAIN THE LIST OF
16 CASES. BUT THE ONLY QUESTION I HAD LEFT WAS -- THERE IS
17 MORE THAN ONE, BUT THE NEXT ONE I THOUGHT OF WAS THE
18 ISSUE OF WHETHER THERE WOULD BE DISMISSALS WITH OR
19 WITHOUT PREJUDICE, AND I ASSUME THE PLAINTIFF WANTS IT
20 WITHOUT PREJUDICE.

21 MR. MCCOY: RIGHT.

22 MR. CASCINO: YOUR HONOR, I LEFT MESSAGES
23 AND I THINK THE LIAISON COMMITTEE IS IN AGREEMENT THAT
24 IT'S ALL RIGHT WITHOUT PREJUDICE AND I DID CALL CLOSE TO
25 70 ATTORNEYS, NOT ALL OF THEM RESPONDED. BUT I DID

1 WAS A DEATH IN THE FAMILY. AS I UNDERSTAND IT, THERE
2 ARE SOME THAT HAVE NOT RESPONDED DESPITE THE FACT THAT
3 WE HAVE TAKEN -- WE OUTLINED ALL THE STEPS THAT WE HAVE
4 TAKEN. MR. VAUGHAN ASKED ME TO ASK, IS THIS APPROPRIATE
5 FOR US TO ASK THE COURT TO ISSUE RULES TO SHOW CAUSE.

6 MR. EVERT: THAT IS NOT IN V.

7 MR. CASCINO: I THOUGHT THAT WAS WHAT WE
8 WERE DEALING WITH.

9 THE COURT: WE'RE ON III.

10 MR. EVERT: HE IS ON ITEM V. YOU ARE ON
11 COUNSEL LIST WHICH IS ITEM V WHICH IS FINE. WE CAN GO
12 AHEAD AND HANDLE THAT NOW.

13 MR. CASCINO: SORRY.

14 THE COURT: I WANT TO GET FINISHED WITH
15 THIS IDEA OF -- IF WE HAVE 6 OR 800 SO-CALLED
16 NONCANCEROUS MINIMAL ASBESTOS DEMONSTRATED CASES, I WANT
17 TO KNOW WHICH ONES THEY ARE AND WHICH ARE THE ONES THAT
18 HAVE SUBSTANTIAL ASBESTOS RELATED DISEASE AND FOLLOW UP
19 HERE AND SO FORTH. HOWEVER YOU WANT TO BREAK THEM UP.

20 MR. CASCINO: WE ARE PREPARED TO DO THAT
21 BY FEBRUARY 11TH. WE IN ESSENCE HAVE THAT INFORMATION.
22 IT JUST NEEDS TO BE PUT DOWN.

23 MR. MCCOY: SO THAT WILL BE DONE BY
24 FEBRUARY 11TH.

25 THE COURT: PUT IN -- THE COVER LETTER

1 THROW IT OUT TO THEM. I ACTUALLY WAS THINKING ABOUT
2 DOING A FORM OF STIPULATION WHERE THEY WOULD SIGN THE
3 STIPULATION, EACH OF THE DEFENDANTS, AS TO THEIR -- THE
4 CASES THEY ARE IN. IT DOES NOT MATTER THOUGH. MY ONLY
5 CONCERN WAS IT WOULD SUGGEST TO ME THAT YOU WANTED US TO
6 FILE LOCAL RULE 7.1 AND DO SOME TYPE OF BRIEF, MAKE IT A
7 BRIEF SAYING -- ADVOCATING THE LAW.

8 THE COURT: IF YOU ARE NOT THE MOVING
9 PARTY -- BEING VERY TECHNICAL. IF JUDGE ROBRENO ISSUES
10 A RULE TO SHOW CAUSE WHY THE FOLLOWING CASES SHOULD BE
11 DISMISSED, AND YOU ARE NOT THE MOVING PARTY, I WOULD
12 LIKE YOU TO FILE A RESPONSE TO THAT IN WHICH YOU
13 EITHER -- HE MAY NOT LIKE THE IDEA OF SENDING ALL THAT
14 LIST OUT. HE MAY JUST DESCRIBE THEM. AND WE DO HAVE TO
15 PUT THE LIST IN LIKE WE DID LAST AUGUST. YOU ACTUALLY
16 PUT A LIST AS AN EXHIBIT TO YOUR RESPONSE TO THE MOTION
17 FOR CAUSE. THAT IS THE WAY I THINK IT SHOULD BE DONE.
18 AND OBVIOUSLY JUDGE ROBRENO WILL CRAFT HIS OWN ORDER,
19 BUT THE BANKRUPT DEFENDANTS OF COURSE ARE NOT DISMISSED
20 OR SENT TO THE NONEXISTENT LIST OF BANKRUPT DEFENDANTS.
21 I SAY NONEXISTENT BECAUSE THERE IS NO LEGAL THING. IT'S
22 A LITTLE MYSTERY.

23 MR. EVERT: YOUR HONOR, TO THAT POINT I
24 JUST WANT TO MAKE SURE THAT WE ARE CLEAR AND CERTAINLY
25 AT LEAST THAT I UNDERSTAND. IT'S MY UNDERSTANDING THAT

1 MR. CASCINO INTENDS TO DISMISS THE INDIANA CASES AGAINST
2 THE NON -- SO-CALLED NONMINE DEFENDANTS, WHICH I THINK
3 MR. SPINELLI WANTS TO SPEAK TO FOR A MINUTE. BUT IN
4 THOSE CASES WHERE ALL OF THE EXPOSURES ARE IN INDIANA,
5 IS THAT RIGHT, SO THAT THERE WOULD STILL BE PENDING
6 CASES IN INDIANA WHICH WE WILL HAVE SOME ISSUES WITH,
7 BUT WE WILL WE WILL FIGURE THAT OUT.

8 THE COURT: SOME OF THE EXPOSURE WAS
9 OUTSIDE THE STATE?

10 MR. EVERT: RIGHT. WE WILL FIGURE THAT
11 OUT WHEN THE TIME COMES. BUT I DID WANT THE COURT TO BE
12 AWARE THAT IT'S NOT GOING TO RESULT IN THE DISMISSAL OF
13 THOSE DEFENDANTS FROM EVERY INDIANA CASE, AS I
14 UNDERSTAND IT. IT'S A PORTION OF THE INDIANA CASES, A
15 SIGNIFICANT PORTION.

16 THE COURT: THE LANGUAGE THAT PLAINTIFF
17 USED WAS WHERE -- THE LAWSUIT WAS COMMENCED IN INDIANA.

18 MR. RILEY: YOUR HONOR, I AGREE THAT WAS
19 THE LANGUAGE THEY USED, BUT BECAUSE THEY HAVE GIVEN US
20 EXHIBIT A AND EXHIBIT B, IT'S CLEAR THAT EXHIBIT A ARE
21 THE INDIANA FILED CASES WHERE THE PLAINTIFFS HAVE
22 SATISFIED THEMSELVES THAT ALL OF THE ALLEGED EXPOSURES
23 TOOK PLACE INSIDE INDIANA. THOSE ARE THE ONLY CASES
24 THEY ARE WILLING TO CONCEDE WOULD BE BARRED BY THE
25 STATUTE OF REPOSE.

1 THE COURT: WEREN'T THOSE LISTS JUST
2 DISTRIBUTED WITHIN THE LAST WEEK?

3 MR. RILEY: YES. AND EXHIBIT B ARE ALSO
4 INDIANA FILED CASES WHERE THE PLAINTIFF HAS IDENTIFIED
5 ONE JOB SITE OUTSIDE OF INDIANA AND IT WAS ON THAT BASIS
6 THAT THEY ARE NOT AT THIS TIME PREPARED TO DISMISS THOSE
7 CASES. AND WHAT WE WILL DO IS FOLLOW YOUR HONOR'S
8 ADMONITION TO SEND A LETTER TO THE PLAINTIFFS' LAWYERS
9 IDENTIFYING THE ADDITIONAL INFORMATION WE WOULD NEED TO
10 HAVE ABOUT THE SO-CALLED EXHIBIT B CASES IN ORDER TO
11 EVALUATE THEM IN THE CONTEXT OF MEDIATION. IF WE CAN'T
12 WORK THAT OUT, WE WILL LET YOU KNOW.

13 THE COURT: THESE ARE -- WOULD BE IN THE
14 FORM OF A MOTION TO DISMISS OR SUMMARY JUDGMENT,
15 SOMETHING LIKE THAT.

16 MR. RILEY: ONCE WE HAVE ENOUGH
17 INFORMATION TO KNOW A LITTLE MORE ABOUT THE EXPOSURE
18 PICTURE AND WHERE WAS THE BULK OF THE EXPOSURE AND HOW
19 IT MIGHT RELATE TO THE INDIANA CHOICE OF LAW FIRMS.

20 THE COURT: WE HAVE SOME VERY -- I
21 UNDERSTAND AND I SEE MR. SPINELLI NODDING HIS HEAD. MR.
22 RILEY WAS CAREFUL ENOUGH FOR MR. SPINELLI'S PURPOSES.

23 WE HAVE NOT DECIDED WHAT TO DO WITH SOME
24 ISSUES. WE MAY HAVE ISSUES THAT ARE NOT RESOLVED THAT
25 WE ARE WILLING TO CONSIDER IN THE PROCESS OF ARGUING THE

1 MEDIATION LIKE YOU DO IN AN ORDINARY SINGLETON CASE.
2 YOU GO IN AND THERE IS NO VERDICT YET, NO MOTION FOR
3 SUMMARY JUDGMENT, AND ONE SIDE SAYS, OH, WE ARE GOING TO
4 WIN THE SUMMARY JUDGMENT, WE ARE FILING IT NEXT WEEK.
5 AND THE MEDIATOR SITS THERE AND SAYS, WELL, I DON'T KNOW
6 WHAT JUDGE JONES IS GOING TO DO, BUT IF I HAD THIS CASE,
7 YOU WOULD NOT GET VERY FAR WITH A MOTION FOR SUMMARY
8 JUDGMENT. WELL, THAT ISSUE IS IN THE MEDIATION. IT'S
9 USEFUL FOR THE PARTIES TO USE IF THE RESOLUTION OF IT IS
10 SO COMPLICATED OR CAUSES SUCH DELAY OR UNCERTAINTY OR
11 WHATEVER THE PROBLEM IS. IT'S NOT STRANGE TO TAKE TO
12 MEDIATION ON UNRESOLVED ISSUES. IT GOES TO THE WEIGHT
13 OF THE EVIDENCE ON WHATEVER SIDE THE UNDECIDED ISSUES
14 MIGHT COME OUT. WE WILL GET THERE. NOT A VERY SUBTLE
15 POINT REALLY, BUT WE ARE NOT IN THAT MODE YET. I JUST
16 WANTED TO MENTION IT.

17 MR. SPINELLI: YOUR HONOR, WITH RESPECT
18 TO THE UNRESOLVED ISSUES, I WILL PUT ON MY UNION CARBIDE
19 HAT AT THIS POINT. AS TO THE STATUTE OF REPOSE, I THINK
20 THERE WAS SOME BRIEFING THAT WAS DONE ABOUT A YEAR AGO
21 CONCERNING THE STATUTE AND ITS APPLICABILITY AND
22 POSSIBLY ITS CONSTITUTIONALITY. AND FROM UNION
23 CARBIDE'S PERSPECTIVE IT DOES NOT TAKE CARE OF ALL OF
24 THEIR ISSUES THAT ALL OF WHAT THE PLAINTIFFS SAY ARE THE
25 NONMINING DEFENDANTS ARE BEING DISMISSED. THAT DOES NOT

1 RESOLVE SOME OF THE OTHER ISSUES CONCERNING UNION
2 CARBIDE. WHAT I WOULD ASK THE COURT IS SINCE THAT IS
3 ALREADY BRIEFED AND READY TO GO, THAT THIS COURT HEAR
4 BRIEF ARGUMENT ON THIS AT THE NEXT MEDIATION PLANNING
5 CONFERENCE.

6 THE COURT: LET ME LOOK AT IT. I
7 REMEMBER THE PAPERS AND WE CHECKED THEM ALL TOGETHER,
8 THERE WAS A BACK AND FORTH, A REPLY AND SURREBUTTAL
9 REPLY. I WILL LOOK AT THE MATERIALS AND SEE IF THERE IS
10 ANYTHING I THINK WE NEED BEYOND THAT. THAT ISSUE IS
11 WHETHER, FOR INSTANCE, A CANADIAN COMPANY IN SITUS OF A
12 MINE IN CANADA FOR INSTANCE, BINDS -- WHETHER THEIR
13 LIABILITY OR POSITION BINDS SUBSEQUENT PURCHASERS OF THE
14 COMPANY OR SOMETHING LIKE THAT.

15 MR. SPINELLI: THAT APPLIES TO CAREY
16 CANADA, YOUR HONOR.

17 THE COURT: THAT IS WHAT I WAS THINKING
18 OF. THE ISSUES ARE WHETHER THEY REALLY ARE RELATED,
19 SUFFICIENTLY LEGALLY RELATED TO HAVING -- HAVING BEEN
20 FOUND TO HAVE -- ASSUME SOMEHOW THE LIABILITY OF THE
21 MINING, THE ACTUAL MINER. THAT IS THE GIST OF IT.

22 MR. SPINELLI: THAT WAS THEIR ARGUMENT.
23 THERE WAS OTHER ARGUMENTS ON THE APPLICABILITY OF THE
24 STATUTE OF REPOSE TO UNION CARBIDE AS A MINER AND ITS
25 CONSTITUTIONALITY THAT WE WOULD LIKE THE COURT TO

1 ADDRESS. IF YOU'D LIKE WE COULD SEND YOU THE PAPERS
 2 AGAIN JUST TO MAKE SURE YOU HAVE THEM.
 3 THE COURT: IF I WANT THEM, WE'LL ASK FOR
 4 THEM.
 5 MR. SPINELLI: I'M SORRY?
 6 THE COURT: IF WE NEED THEM, WE WILL ASK
 7 FOR THEM.
 8 MR. SPINELLI: FINE. THE OTHER ISSUE IS
 9 MR. CASCINO HAS BEEN DISCUSSING, HIS EXHIBIT A HAS THE
 10 NAMES OF THE REMAINING PARTIES. THERE IS AN ISSUE AS TO
 11 WHETHER RHONE POULENC, WHO'S ON A NUMBER OF CLAIMS,
 12 WHETHER THEY ARE TRULY A MINER OR AN ALLEGED MINER. WE
 13 ARE TRYING TO WORK OUT THAT ISSUE AND --
 14 THE COURT: KEEP WORKING.
 15 MR. SPINELLI: YEAH, WE ARE. THANK YOU.
 16 THE COURT: AS TO THE REST OF ROMAN
 17 NUMERAL IV, THIS WAS WRITTEN WHEN I DID NOT KNOW ABOUT
 18 THAT LIST BEING SENT AROUND, MORE OF A CLEANUP, BUT
 19 THERE HAS BEEN A LOT OF THINGS DONE SINCE THEN. IT'S
 20 LIST B IS THE ONE THAT NEEDS TO BE -- WILL NOT BE
 21 DISMISSED AT THIS TIME, CORRECT?
 22 MR. CASCINO: THAT IS CORRECT.
 23 THE COURT: A IS THE ONE THAT YOU ARE
 24 WILLING TO DISMISS WITHOUT PREJUDICE.
 25 MR. CASCINO: THE DEFENDANTS -- ALL THE

1 DEFENDANTS EXCEPT RIGHT NOW FOR RAPID AMERICAN, RHONE
 2 POULENC AND UNION CARBIDE. WE ARE WORKING ON RHONE
 3 POULENC.
 4 THE COURT: I WILL TAKE THAT UP WITH
 5 JUDGE ROBRENO, RUN IT BY HIM AS A WAY TO MOVE. HOW MANY
 6 CASES ARE LEFT THAT WOULD BE -- STILL TO BE LITIGATED ON
 7 THE INDIANA ISSUE? LIST B, HOW MANY CASES?
 8 MR. CASCINO: HE THINKS IT'S AROUND 60.
 9 BECAUSE A LOT OF THEM HAVE MORE THAN ONE JOB SITE. I'M
 10 SORRY. 170.
 11 THE COURT: WELL, THAT'S GOING TO BE
 12 300 CASES THAT ARE TO BE DISMISSED, SOMETHING LIKE THAT?
 13 MR. CASCINO: I WAS THINKING CLIENTS.
 14 THE COURT: I BELIEVE YOU TOLD ME
 15 INFORMALLY 450 WAS A ROUGH ESTIMATE, BOTH LISTS. MAYBE
 16 IT WAS ONLY ONE.
 17 MR. CASCINO: 450 CLIENTS ARE DISMISSING
 18 ALL OF THEM EXCEPT THE THREE DEFENDANTS, RAPID AMERICAN,
 19 RHONE POULENC AND UNION CARBIDE, AND THOSE THREE
 20 DEFENDANTS ARE NOT IN ALL OF THE CASES.
 21 THE COURT: LIST B?
 22 MR. CASCINO: LIST B ARE THE CASES IN
 23 WHICH THE PEOPLE WORKED OUTSIDE OF INDIANA AT 1 TO 20
 24 DIFFERENT JOB SITES.
 25 THE COURT: THAT NUMBER IS ROUGHLY WHAT?

1 MR. CASCINO: 170.
 2 THE COURT: JUST WANT TO GET AN IDEA.
 3 JUST MAKE SURE THAT PROCEDURE IS OKAY
 4 WITH JUDGE ROBRENO, WHICH IT WILL BE. I WILL LET YOU
 5 KNOW. I GUESS YOU'LL WILL KNOW ON THE ISSUES OF RULE TO
 6 SHOW CAUSE. I WAS WONDERING, WOULDN'T IT BE -- I'M
 7 ALWAYS AN OPTIMIST, WHY WOULDN'T THE RULE TO SHOW CAUSE
 8 APPLY TO ALL DEFENDANTS INCLUDING THE ALLEGED MINING
 9 COMPANIES? TELL US WHAT YOU HAVE AGAINST EVERYBODY.
 10 MR. SPINELLI: I LIKE THAT IDEA.
 11 THE COURT: WHEN IT COMES OUT THAT THERE
 12 IS NOTHING AGAINST SOME OF THEM, THAT WILL ALLOW YOU TO
 13 RESOLVE THEM BETWEEN NOW AND THE TIME OF THE HEARING ON
 14 THE RULE TO SHOW CAUSE MOTION. THOSE THAT HAVE WORKED
 15 SOMETHING OUT, CAN BE PUT BACK ON THE LIST OF
 16 DISMISSALS.
 17 MR. MCCOY: THERE ARE A COUPLE OF REASONS
 18 WHY THAT MIGHT BE DIFFICULT, JUDGE. ONE IS BECAUSE WE
 19 WOULD NEED SOME DISCOVERY FROM RAPID AMERICAN ABOUT
 20 THEIR PRODUCTS OVER IN INDIANA AND THE SAME FOR UNION
 21 CARBIDE. AND THE SECOND REASON IS --
 22 THE COURT: IF IT'S 50-50 OR BLEAKER THAN
 23 THAT, THERE IS NO SENSE DOING IT. IF THE CHANCES OF
 24 GETTING ALL OF THEM SOMEHOW TO BE DISMISSED ARE NOT
 25 HIGH, THEN THERE IS NO REASON TO DO THAT, THE WAY I

1 SUGGESTED. FOR THOSE OF YOU WHO DO NOT UNDERSTAND ALL
 2 THIS, I REGRET THAT YOU ARE IN THAT STATE OF AFFAIRS. I
 3 JUST DECIDED WE WON'T DO WHAT I THOUGHT MIGHT BE
 4 HELPFUL. OKAY.
 5 WE ARE GOING TO MOVE TO ROMAN NUMERAL V.
 6 OKAY. MR. MCCOY AND MR. CASCINO, WHAT DO WE DO WITH
 7 NUMBER V?
 8 MR. MCCOY: THAT IS THE ONE WE GOT
 9 CONFUSED ON BEFORE. THAT IS THE ONE THAT MIKE CASCINO
 10 HAS THE LIST ON TODAY.
 11 MR. CASCINO: WE TENDERED TO THE COURT
 12 AND TO THE DEFENSE LIAISON A PROGRESS REPORT ON THE
 13 IDENTIFICATION OF PERIPHERAL DEFENDANTS. WE HAVE
 14 IDENTIFIED MOST OF THE DEFENDANTS. THERE ARE SOME THAT
 15 ARE STILL REMAINING THAT ARE CONTAINED IN THAT REPORT.
 16 WE HAVE INDICATED WHAT WE HAVE DONE. AT THIS POINT WE
 17 WOULD LIKE THE COURT TO ALLOW US TO FILE A RULE TO SHOW
 18 CAUSE AGAINST THE DEFENDANTS WHO ARE NOT RESPONDING
 19 -- AGAINST THE ATTORNEYS FOR THE DEFENDANTS WHO ARE NOT
 20 RESPONDING AS TO WHETHER OR NOT THEY REPRESENT. PACER
 21 WILL SHOW, FOR EXAMPLE, WHO THEY REPRESENT AND THEY SAY,
 22 WELL, WE DON'T REPRESENT. WELL, WHO DOES REPRESENT?
 23 WELL, WE DON'T KNOW WHO REPRESENTS. OR THEY JUST SIMPLY
 24 DON'T ACKNOWLEDGE US OR WHERE THEY REFUSE TO EVEN GET
 25 BACK TO US DESPITE THE FACT THAT WE SENT E-MAILS,

1 TELEPHONE CALLS AND LETTERS TO THEM.
 2 THE COURT: ARE THEY COUNSEL OF RECORD?
 3 MR. CASCINO: YES. IN MOST INSTANCES
 4 THEY ARE. SOME INSTANCES WE ARE TRYING TO TRACK THEM
 5 DOWN. WE SHOW WHAT WE DID TO TRY TO TRACK THEM DOWN.
 6 THE COURT: IT WOULD BE NICE TO CLEAN UP
 7 EACH AND EVERY SINGLE CASE THAT IS IN YOUR OFFICE. THAT
 8 IS OUR GOAL BUT SOMETIMES YOU CAN'T DO EVERYTHING YOU
 9 WANT TO DO. YOU CAN PREPARE A RULE TO SHOW CAUSE WITH A
 10 FORM OF ORDER AND I DON'T THINK THE ACTIVE DEFENDANTS
 11 HAVE MUCH TO SAY ABOUT IT. I DON'T KNOW. BY ACTIVE I
 12 MEAN THOSE VITAL HUMAN BEINGS IN THE COURTROOM HERE.
 13 THEN CAN YOU FILE -- SEND ME THE -- DON'T
 14 FILE IT WITH THE CLERK. JUST SEND TWO COPIES TO ME OF
 15 THE RULE TO SHOW CAUSE. WHEN CAN YOU DO THAT?
 16 MR. CASCINO: I CAN DO THAT WITHIN THE
 17 NEXT -- IT'S MR. VAUGHAN'S AREA AND I'M COMMITTING HIM,
 18 BUT GIVE US TWO WEEKS.
 19 THE COURT: I WOULD LIKE TO HELP OUT WITH
 20 THAT, BUT LET'S LOOK AT WHAT WE HAVE HERE. WE HAVE A
 21 JANUARY 31ST DEADLINE FOR PLAINTIFFS TO DISMISS ANY
 22 DEFENDANTS WHO THEY ARE NOT ABLE TO LOCATE. I DON'T
 23 KNOW IF YOU HAVE ANY OF THOSE.
 24 MR. CASCINO: WE DO AND THEY ARE THE ONES
 25 THAT ARE REFUSING TO RESPOND. IT WOULD BE UNFAIR TO US

1 IF SOMEONE DOES NOT RESPOND AND WE HAVE CALLED THEM,
 2 SENT THEM AN E-MAIL, SENT THEM A LETTER AND CALLED THEM
 3 AGAIN AND THEY DON'T RESPOND, IT WOULD BE UNFAIR TO
 4 DISMISS THEM ON JANUARY 31ST BECAUSE THEY HAVE NOT
 5 RESPONDED. I WOULD JUST ASK THAT WE BE ALLOWED TO FILE
 6 A RULE TO SHOW CAUSE AGAINST THOSE WHO HAVE NOT
 7 RESPONDED, THAT WE CANNOT -- THAT WON'T ACKNOWLEDGE THEY
 8 REPRESENT AND WE CAN DO THOSE WITHIN TWO WEEKS.
 9 THE COURT: WHY DON'T YOU PUT SOME TEETH
 10 IN IT THEN, WITH THE PROPER CITATION. FILE A MEMO OF
 11 LAW, RULE 7.1. EVEN THOUGH IT'S NOT TECHNICALLY A
 12 MOTION, IT'S LIKE A MOTION, AND PUT A MEMO OF LAW IN
 13 THERE THAT SAYS I CAN ENTER A JUDGMENT AGAINST THEM.
 14 NOT THAT I'M THREATENING ANYBODY, BUT THAT IS THE MOST
 15 YOU CAN GET OUT OF THIS IS A JUDGMENT AGAINST SOMEBODY
 16 WHO DOES NOT PAY ATTENTION TO THE CASE. YOU WILL HAVE
 17 TO DIG OUT A FEW CASES TO SUPPORT THAT.
 18 MR. CASCINO: CAN WE HAVE TWO WEEKS TO DO
 19 THAT THEN?
 20 THE COURT: YES. THAT DATE WOULD BE --
 21 MR. BRUCH: JUDGE --
 22 THE COURT: JUST A SECOND.
 23 TWO WEEKS IS THE 9TH.
 24 MR. BRUCH: DAN BRUCH, YOUR HONOR. ON
 25 THIS RULE TO SHOW CAUSE SINCE WE DON'T KNOW -- WE DON'T

1 KNOW WHETHER -- WHO IT'S GOING TO BE AGAINST, I WANT TO
 2 KNOW HOW DO WE GET ACCESS TO THIS RULE TO SHOW CAUSE,
 3 OTHER THAN GOING TO LIAISON COUNSEL WHO MAY NOT BE
 4 REPRESENTING THESE UNKNOWN DEFENDANTS. WE ARE ALL
 5 SITTING HERE NOT KNOWING WHAT IS BEING TALKED ABOUT.
 6 THE COURT: WE CAN PUT IT ON THE WEBSITE.
 7 THERE IS NOTHING SECRET ABOUT IT.
 8 MR. BRUCH: OKAY. THAT WILL BE FINE.
 9 THANK YOU.
 10 MR. EVERT: IT MAY NOT BE A BAD IDEA --
 11 THE COURT: EXCUSE ME A SECOND.
 12 MR. EVERT: I APOLOGIZE.
 13 THE COURT: TO THOSE NEW FOLKS IN THE
 14 CASE, THE COURT -- CLERK'S OFFICE WEBSITE HAS A REGULAR
 15 HOME BASE FOR ASBESTOS LITIGATION. IT HAS ALL KINDS OF
 16 STUFF ON THERE. IF YOU HAVE NOT SEEN IT, YOU OUGHT TO
 17 TAKE A LOOK AT IT. GO AHEAD.
 18 MR. EVERT: THANK YOU, YOUR HONOR. IN
 19 LOOKING THROUGH THE BOOKLET THAT MR. CASCINO WAS
 20 REFERRING TO, TAB NINE APPARENTLY IS THE LIST OF COUNSEL
 21 THAT YOU CAN'T FIND -- A LIST OF COMPANIES YOU CAN'T
 22 FIND COUNSEL FOR.
 23 MR. CASCINO: YES, SIR.
 24 THE COURT: NONRESPONSIVE.
 25 MR. EVERT: NONRESPONSIVE. SO IF -- I

1 WOULD ASK IF YOU WOULD E-MAIL TAB NINE TO ME, I'M GLAD
 2 TO E-MAIL IT OUT TO THE ENTIRE GROUP AND POSSIBLY THERE
 3 MIGHT BE SOME OVERLAP OF COUNSEL.
 4 MR. CASCINO: YOU HAVE IT THERE.
 5 MR. EVERT: WELL, OKAY. I WILL SCAN IT.
 6 SURE. I WILL SCAN IT.
 7 THE COURT: PERISH THE THOUGHT THAT
 8 SOMEONE WHO THOUGHT THE JUDGE WAS AFTER THEM MIGHT
 9 RESPOND BEFORE SOMETHING BAD HAPPENS.
 10 MR. EVERT: I THINK IN ALL LIKELIHOOD,
 11 YOUR HONOR, IT'S REALLY PROBABLY -- THEY ARE IN ONE OR
 12 TWO CASES, AND IT'S BURIED IN A STACK OF SOMETHING ELSE
 13 AND SO...
 14 THE COURT: PEOPLE THEY REPORT TO BACK AT
 15 THEIR CLIENTS ARE CHANGED AND THEY DON'T KNOW ANYTHING
 16 ABOUT IT.
 17 MR. EVERT: WELL, YEAH. WE ARE TALKING
 18 ABOUT COUNSEL FROM A LIST AND THE CASE WAS FILED IN
 19 1996. HE DOES NOT REPRESENT HIM ANYMORE. I MEAN ALL
 20 KINDS OF THINGS. SO I WILL -- I WILL SEND TAB NINE TO
 21 EVERYBODY. IT'S THE LIST.
 22 THE COURT: THERE IS ALWAYS AN
 23 ALTERNATIVE TO INCLUDING SOMEONE IN THE RULE TO SHOW
 24 CAUSE IF YOU GET TO TALK TO THEM, THAT IS TO SETTLE THAT
 25 SINGLETON CASE WITH HIM. BUT IF YOU CAN'T TALK TO

1 HIM -- YOU CAN PROBABLY TALK TO HIM IF THE RULE ISSUES.
 2 ROMAN NUMERAL V (1), THAT DEADLINE, WHAT
 3 HAS HAPPENED TO IT? TWO WEEKS IS BY THE WAY THE 9TH OF
 4 FEBRUARY. JANUARY 31ST DEADLINE DISMISS ANY DEFENDANTS
 5 WHO THEY ARE UNABLE TO LOCATE.
 6 THE CLERK: EXCEPT FOR THE ONES ON THE
 7 LIST.
 8 THE COURT: YEAH. I GUESS IT'S OKAY.
 9 SOME DECISION TO -- WE WANTED TO MAKE JANUARY 31ST THAT
 10 YOU WOULD DISMISS ANY DEFENDANTS WHO ARE -- I GUESS WE
 11 ASSUME A LEGITIMATE REASON OR NOT NECESSARILY BAD
 12 CONDUCT BUT JUST A CONCESSION ON YOUR PART THAT THEY
 13 HAVE DISAPPEARED INTO THE ETHER AND WILL NEVER COME BACK
 14 AGAIN. IF YOU HAVE ANY OF THOSE, SEEK A DISMISSAL ORDER
 15 FROM JUDGE ROBRENO FOR THOSE, JANUARY 31ST.
 16 DID YOU UNDERSTAND?
 17 MR. CASCINO: WE TRIED TO CONTACT. WE
 18 TOOK STEPS TO CONTACT. THERE IS ONLY ABOUT -- IT'S NOT
 19 A LONG LIST. IT'S THREE PAGES AND WE FOUND MOST OF THE
 20 OTHERS. WE FOUND ALL THE OTHERS. AND I MEAN, I KNOW
 21 THAT THESE PEOPLE MAY REPRESENT THESE PEOPLE BASED ON
 22 EVERYTHING THAT I HAVE SEEN. THEY ARE JUST REFUSING TO
 23 RESPOND.
 24 THE COURT: SO YOU PROBABLY DON'T HAVE
 25 ANY THAT ARE CONCEIVED IN ROMAN NUMERAL V, SUB 1.

1 MR. CASCINO: CORRECT.
 2 THE COURT: WHERE YOU ARE WILLING TO
 3 DISMISS THEM BECAUSE THEY ARE REALLY NONEXISTENT AND
 4 UNAVAILABLE. NUMBER 1 IS MOOT. HAVE YOU DONE THE THING
 5 THAT IS ROMAN NUMERAL V, SUB 2? IS THAT THAT BOOKLET?
 6 MR. CASCINO: YES, YOUR HONOR, SECTION 8,
 7 OR PLAINTIFF'S EXHIBIT 8 IS A LIST OF THE VERIFIED
 8 COUNSEL OF THE DEFENDANTS AND SO WE HAVE COMPLIED WITH
 9 THAT.
 10 THE COURT: DON'T WE USUALLY -- HAVE WE
 11 TRIED TO GET THE PEOPLE THAT ARE IN THE CASE TO GET
 12 NOTICE OF THIS BEING INCLUDED IN THE LIST, HAVE TO
 13 OBJECT TO IT IF THEY DON'T WANT TO BE ON THE LIST? I
 14 THOUGHT THAT IS WHAT WE HAVE DONE IN THE PAST. MR.
 15 SPINELLI HAS BEEN INVOLVED IN THAT.
 16 MR. SPINELLI: I THINK THAT IS CORRECT.
 17 THE COURT: MR. CASCINO, DO YOU THINK YOU
 18 COMPLIED WITH ROMAN NUMERAL V, SUB 2?
 19 MR. CASCINO: YES, YOUR HONOR. I BELIEVE
 20 THAT THAT IS WHAT IS ON PLAINTIFF'S EXHIBIT NUMBER 8.
 21 THE COURT: JUST TODAY YOU HANDED THE
 22 BOOK OVER.
 23 MR. CASCINO: I GAVE A COPY TO YOUR LEGAL
 24 ASSISTANT. I GAVE COPIES TO THE DEFENSE LIAISON
 25 COMMITTEE. YOU CAN HAVE MY COPY HERE.

1 THE COURT: THE DEFENSE LIAISON COMMITTEE
 2 WILL FIGURE OUT WHAT IS GOOD FOR THE ENTIRE GROUP. ARE
 3 YOU GOING TO SEND OUT A LIST?
 4 MR. EVERT: YES, YOUR HONOR. I'M GOING
 5 TO SEND OUT THE LIST. AS MR. CASCINO SAID, IT'S A VERY
 6 BRIEF LIST. I DIDN'T COUNT IT, BUT I'M GUESSING IT'S
 7 ABOUT 20 COMPANIES. AND I'M GOING TO SEND IT AROUND.
 8 WE WILL SEE.
 9 THE COURT: YOU WILL COORDINATE SOME SORT
 10 OF RESPONSE IF ANYBODY WANTS TO RESPOND INFORMALLY. IF
 11 THEY ARE GOING TO END UP ON A RULE OF SHOW CAUSE, YOU
 12 WILL TELL THEM THAT.
 13 MR. EVERT: YES. I WILL SEND IT OUT
 14 TOMORROW AND THEN WE CAN -- HOPEFULLY WE WILL GET SOME
 15 RESPONSES WITHIN THE NEXT WEEK BEFORE WE GET TO THE TIME
 16 OF RULE TO SHOW CAUSE.
 17 THE COURT: TWO WEEKS FROM NOW.
 18 MR. EVERT: IN MY LIMITED EXPERIENCE,
 19 JUDGE, IF THE COMPANY IS ACTUALLY A DEFENDANT IN A CASE
 20 BEING IN FEDERAL COURT, THEY LIKE TO HAVE A LAWYER. SO
 21 I WOULD THINK IT'S JUST A QUESTION OF JUST GETTING TO
 22 THE RIGHT PERSON.
 23 THE COURT: IF YOU NEED SUCH A THING AS
 24 AN EXTENSION OF TIME BECAUSE FIVE OF THEM ARE HAVING
 25 TROUBLE WITH THEIR CLIENTS AND WHATEVER, TAKE IT UP WITH

1 PLAINTIFFS COUNSEL AND THEN GET BACK TO ME. WE WILL
 2 EXTEND THE TIME FOR FILING THE RULE TO SHOW CAUSE.
 3 MR. EVERT: THANK YOU, YOUR HONOR.
 4 MR. MCCOY: WHAT WAS THE DEADLINE FOR
 5 FILING ON THAT RULE TO SHOW CAUSE, JUDGE? I DIDN'T GET
 6 THAT.
 7 THE COURT: I THOUGHT IT WAS THE 9TH.
 8 9TH OF FEBRUARY, TWO WEEKS.
 9 MR. EVERT: I'M SORRY. JUST ONE LAST
 10 THING IF I CAN ASK. WOULD IT BE EASY FOR YOU TO ALSO
 11 PROVIDE THE NAMES OF THE CASES THAT THESE ROUGHLY 20
 12 DEFENDANTS ARE IN? I THINK THAT MIGHT BE HELPFUL.
 13 MR. CASCINO: YES.
 14 MR. EVERT: WHEN WE SEND IT AROUND -- SO
 15 FOR EXAMPLE --
 16 THE COURT: IT'S NOT IN THE BOOK RIGHT
 17 NOW?
 18 MR. CASCINO: IT IS WHO THEY REPRESENT.
 19 MR. EVERT: BUT ABC COMPANY, YOU KNOW,
 20 YOU ARE IN THESE SIX CASES WITH THE FOLLOWING CIVIL
 21 ACTION NUMBERS. IT WOULD BE NICE IF ANY OF THE
 22 DEFENDANTS REPRESENT THAT CLIENT THEY COULD THEN SEND IT
 23 TO THE CLIENT, HEY, HERE IS WHERE YOU CAN FIND THIS.
 24 THAT WOULD BE VERY USEFUL I WOULD THINK. DOES THAT MAKE
 25 SENSE?

1 MR. CASCINO: MOST OF THEM HAVE ONLY ONE
 2 TO FIVE. SOME THAT ARE INVOLVED ARE PERSONALITIES,
 3 THEY'RE JUST PEOPLE THAT DON'T RESPOND TO ANYTHING.
 4 MR. MCCOY: SO THE ANSWER IS, WE WILL DO
 5 IT.
 6 MR. EVERT: TALKING ABOUT VERY OLD CASES
 7 AND MAYBE ONE CASE.
 8 THE COURT: DO THAT BY NEXT MONDAY SO WE
 9 CAN GET HIS LETTER OUT?
 10 MR. CASCINO: ROB SAYS HE CAN DO THAT BY
 11 NEXT MONDAY.
 12 MR. EVERT: OKAY, GREAT.
 13 THE COURT: MR. LANG, DO YOU KNOW WHAT
 14 THEY ARE DOING BY NEXT MONDAY?
 15 THE CLERK: I DO.
 16 THE COURT: THAT IS THE 31ST.
 17 MR. CASCINO: YES. 31ST.
 18 THE COURT: NUMBER VI. WE ARE NOT GOING
 19 TO SPEND ANY AMOUNT OF TIME IN THIS JOINT SESSION ON
 20 THOSE BUT IF WE CAN SQUEEZE IN A FEW MINUTES AFTER --
 21 MR. RILEY: REPORT, VERY BRIEF. WE HAVE
 22 HAD SOME NEGOTIATIONS AND THEY ARE ONGOING. WE WILL
 23 CERTAINLY ADVISE YOUR HONOR WHEN WE ARE PREPARED TO
 24 BRING WHATEVER RESIDUALS WE HAVE TO YOU.
 25 THE COURT: OUR NEXT STEP IF THEY ARE NOT

1 METHODOLOGIES GOING ON TO DEAL WITH THIS ISSUE BEFORE WE
 2 GET TO ALL OF THE THINGS THAT ARE IN NUMBER VII. ISN'T
 3 THAT A FAIR STATEMENT? THERE HAS BEEN SOME WORK DONE ON
 4 THIS WHOLE THING. WE DON'T NEED TO GO THROUGH ITEM VII
 5 AT ALL RIGHT NOW.
 6 MR. SPINELLI: IF THERE ARE ISSUES, WE
 7 WILL RAISE THEM AT THE NEXT CONFERENCE AND ASK --
 8 THE COURT: WE WILL MAKE SURE WE GET THEM
 9 ON THE LIST.
 10 MR. SPINELLI: THANK YOU.
 11 THE COURT: ITEM VIII IS A BIG ONE. I
 12 DON'T KNOW WHETHER WE SHOULD BE -- HOW WE SHOULD
 13 IDENTIFY THE ISSUE BEYOND MY PERHAPS FEEBLE ATTEMPT,
 14 WHETHER WE SHOULD MEET IN A CAUCUS MODE SEPARATELY WITH
 15 EACH SIDE AND GO OVER THIS STUFF OR NOT. IF SOME OF
 16 THESE THINGS MAKE SENSE OR ARE UNDERSTANDABLE FIRST.
 17 AND SOMEONE IS INTERESTED IN PURSUING SOME OF THESE
 18 ISSUES IN THE OPEN FORUM, I'M WILLING TO DO THAT, BUT IF
 19 IT'S GOING TO BE A NEGOTIATED FORMAT THAT WE ARE LOOKING
 20 FOR YOU MAY WANT TO DO IT IN A CAUCUS SETTING. I'M NOT
 21 RECOMMENDING ANYTHING. WHAT DO YOU WANT TO DO?
 22 MR. MCCOY: I'M HAPPY TO GIVE YOU OUR
 23 THOUGHTS ON THAT NOW, JUDGE, BUT IT PROBABLY MAKES SOME
 24 SENSE JUST TO GIVE THEM TO YOU FIRST. AND THEN IT WON'T
 25 TAKE US LONG TO EXPRESS THEM, MAYBE FIVE MINUTES OR LESS

1 SETTLED IS TO COME UP WITH A METHOD TO GET THEM SETTLED.
 2 MR. RILEY: UNDERSTOOD.
 3 THE COURT: WE KNOW WHAT THE FORM IS BUT
 4 WHAT ARE THE ISSUES GOING TO BE.
 5 MR. RILEY: UNDERSTOOD.
 6 THE COURT: DO YOU HAVE A LETTER ORDER
 7 THAT YOU WERE TO REPORT THE STATUS BY TODAY?
 8 MR. RILEY: THAT'S CORRECT. AND THAT
 9 WOULD BE MY REPORT.
 10 THE COURT: WE WILL KICK IT UP TO TWO
 11 WEEKS, FEBRUARY 9TH.
 12 ITEM VII IS KIND OF IN LIMBO, ISN'T IT?
 13 MR. SPINELLI?
 14 MR. SPINELLI: YES.
 15 THE COURT: SORRY TO INTERRUPT YOU.
 16 MR. SPINELLI: SORRY, JUDGE. I WAS
 17 ACTUALLY CONSULTING ON NUMBER VII BECAUSE I WANTED TO
 18 KNOW IF THERE WAS ANOTHER ISSUE TO RAISE WITH YOUR
 19 HONOR.
 20 THE COURT: THAT IS WHAT I WONDERED.
 21 MR. SPINELLI: EXCUSE ME.
 22 THE COURT: INDEED.
 23 MR. SPINELLI: YES, YOUR HONOR. IT'S
 24 STILL IN LIMBO.
 25 THE COURT: MY POINT WAS WE HAVE OTHER

1 FROM THE PLAINTIFF'S END AND THEN WHATEVER YOUR HONOR
 2 WANTS TO DO AS FAR AS SHARING THAT WITH THE DEFENSE.
 3 THE COURT: HAS THERE BEEN ANY RECENT
 4 DISCUSSIONS ABOUT THIS BY THE PARTIES?
 5 MR. MCCOY: I DON'T KNOW OF ANY REAL
 6 DISCUSSIONS AMONGST THE PARTIES ABOUT NUMBER VIII OTHER
 7 THAN JUST VERY GENERAL, THAT, YEAH, EVERYBODY WANTS TO
 8 RESOLVE IT. BUT I DON'T REMEMBER ANY SPECIFICS BUT I
 9 KNOW WE HAVE HAD OUR OWN INTERNAL DISCUSSIONS ABOUT HOW
 10 TO RESOLVE IT. THAT IS WHY I SAY WE COULD QUICKLY GIVE
 11 YOU THOSE.
 12 THE COURT: THANK YOU. WHAT IS MISSING
 13 FROM THIS IS THE NITTY-GRITTY OF THE DAILY, SO-TO-SPEAK
 14 INDIVIDUAL CASE MEDIATION. HOW TO PREPARE FOR THOSE AND
 15 WHAT PAPERS HAVE TO BE IN HAND, ALL THAT STUFF. THE
 16 PLAINTIFF HAS DONE THAT ONCE A YEAR AGO AND THEY HAD
 17 SOME VERY GOOD IDEAS ON WHAT -- AUGMENTING THE MATERIALS
 18 SO IT WAS ALL UP-TO-DATE. THAT KIND OF DETAIL IS NOT IN
 19 HERE. WE ARE STILL AT THE CONCEPTUAL STAGE. DOES
 20 DEFENSE LIAISON THINK WE OUGHT TO MEET PRIVATELY? OR
 21 NOT? MAYBE IT DEPENDS ON WHAT THE PLAINTIFF HAS IN
 22 MIND.
 23 MR. RILEY: YES, IT IS KIND OF A PIG IN A
 24 POKE AT THIS POINT.
 25 THE COURT: I KNOW THAT.

1 MR. MCCOY: IS THAT ABOUT OUR POSITION OR
 2 YOUR POSITION?
 3 MR. RILEY: RIGHT.
 4 MR. EVERT: IT'S ABOUT THE PIG.
 5 THE COURT: I DIDN'T HEAR THAT.
 6 MAYBE I SHOULD NOT HAVE.
 7 MR. EVERT: PROBABLY BEST, YOUR HONOR.
 8 MR. MCCOY: WE HAVE HAD GENERAL
 9 DISCUSSIONS, JUDGE. I THINK WE SHOULD PUT IT AT THAT
 10 LEVEL.
 11 THE COURT: OFF THE RECORD.
 12 (OFF THE RECORD DISCUSSION.)
 13 THE COURT: BACK ON THE RECORD. THE
 14 COURT'S MEDIATION PLANNING CONFERENCE IS IN RECESS FOR A
 15 FEW MINUTES, OFF THE RECORD DISCUSSIONS WITH COUNSEL FOR
 16 PLAINTIFFS.
 17 (OFF THE RECORD DISCUSSION.)
 18 THE COURT: BACK ON THE RECORD. I'M
 19 STANDING OUT HERE BECAUSE I WANT TO TAKE YOU GUYS IN
 20 THAT ROOM. I DON'T THINK WE WILL BE AS LONG AS WE WERE
 21 WITH PLAINTIFFS BECAUSE THAT IS TRUE, BUT THERE IS ALSO
 22 THE WEATHER COMING DOWN AROUND OUR HEADS.
 23 MR. EVERT: YOU WOULD LIKE FOR US TO --
 24 THE COURT: YES, WOULD YOU PLEASE.
 25 MR. EVERT: SURE.

1 THE COURT: LET THE RECORD SHOW THAT THE
 2 MEDIATOR IS THE CONSULTING WITH THE CAUCUS OF DEFENSE
 3 LIAISON COUNSEL IN AN OFF THE RECORD SESSION. OFF THE
 4 RECORD.
 5 (OFF THE RECORD DISCUSSION.)
 6 THE COURT: WE ARE BACK ON THE RECORD.
 7 HAVING HELD AN EX PARTE CAUCUS WITH PLAINTIFF'S COUNSEL
 8 AND SEPARATELY COUNSEL FOR -- COUNSEL WHO ARE THE
 9 DEFENSE LIAISON COMMITTEE, I CONCLUDE THAT THE ITEM VIII
 10 OF THE AGENDA FOR TODAY WILL NOT BE RESOLVED BY
 11 PARAGRAPH BY PARAGRAPH DISCUSSIONS. IT WILL BE BACK ON
 12 THE AGENDA FOR THE NEXT MEETING. IN THE MEANTIME, I
 13 HAVE ASKED, AND WE'LL COME UP WITH A DATE FOR THIS, THAT
 14 EACH SIDE SUBMIT TO ME AN EX PARTE LETTER DOCUMENT OR
 15 OTHER DOCUMENT THAT OUTLINES THEIR SUGGESTIONS FOR
 16 MANAGING THE MEDIATION. AND IF IT WAS NOT CLEAR BEFORE,
 17 I ASK EACH COUNSEL FOR THE PLAINTIFFS AND FOR THE
 18 LIAISON COMMITTEE TO INCLUDE IN THEIR PLANNING
 19 RECOMMENDATIONS, BOTH SIDES CAN DO THIS, WHAT THEY NEED
 20 BY WAY OF THE JUDGE'S EUPHEMISTIC REFERENCE TO THE
 21 INFORMAL DISCOVERY IN ADDITION TO THE DISCOVERY OF
 22 CALLING WITNESSES THAT WERE DISCUSSED BEFORE. THAT IS
 23 NOT WHAT I'M TALKING ABOUT. I'M TALKING ABOUT -- THAT
 24 MAY BE INCLUDED. I MEAN TO INCLUDE -- ALLOW THE
 25 SUBMISSION OF ANY OTHER REQUESTS FOR DISCOVERY WHETHER

1 FORMAL OR INFORMAL. AND TEMPORARILY -- BY TEMPORARILY I
 2 JUST MEAN HOW LONG IT'S GOING TO BE LASTING THIS WAY OR
 3 REVISE IT LATER IF WE NEED TO, THE HANDLING OF THE MOST
 4 SERIOUS CASES THAT PLAINTIFFS COUNSEL REFERRED TO AS,
 5 FOR INSTANCE THE -- I THINK THE PHRASE TOP 50 WAS
 6 MENTIONED AND THE RECOGNITION OF THAT GROUP --
 7 RECOGNITION OF THE NONMALIGNANT PLEURAL CASES AS A GROUP
 8 FOR PLANNING PURPOSES. I WOULD LIKE THE SUGGESTIONS FOR
 9 MANAGEMENT OF THE MEDIATION TO INCLUDE RECOMMENDATIONS
 10 FOR EACH GROUP, SEPARATELY AND WITH THE IDEA THAT IT'S
 11 HIGHLY LIKELY THAT WE WILL PROCEED TO GATHER
 12 INFORMATION, FINAL INFORMATION FOR EVALUATION OF AND
 13 DISCOVERY FOR THOSE TWO GROUPS OF CASES. WE MAY
 14 CONTINUE THAT JUXTAPOSITION AND WILL DO IT INDEFINITELY,
 15 BUT HOW IT WILL ULTIMATELY RESOLVE. HOW TO ACTUALLY
 16 MEDIATE THOSE CASES WE DON'T HAVE AN ANSWER FOR YET.
 17 BUT THE PREPARATION TO SIT DOWN AND FIX THE RULES FOR
 18 THE MEDIATION SESSIONS WE'LL HAVE TO -- WE WILL PRESUME
 19 THE PREPARATION OF GATHERING INFORMATION FOR THE TOP 50
 20 AND THE NONMALIGNANT CASES SIMULTANEOUSLY OR TOGETHER.
 21 SO WE DON'T JUST EXTEND INTO THE FUTURE.
 22 AND I ALSO REPORTED TO EACH SIDE IN THE
 23 CAUCUS THAT ULTIMATELY I WILL BRING BOTH SIDES TOGETHER
 24 WITH THEIR POSITIONS AND WE WILL QUOTE MEDIATE THE
 25 PROCEDURES AND SUBJECT TO THE APPROVAL OF ALL CLIENTS.

1 IF THERE IS GOING TO BE AN AGREEMENT THEN ALL DEFENDANTS
 2 WILL HAVE TO AGREE AS A LIKELIHOOD. BUT AS I REPEAT
 3 MYSELF, I TOLD BOTH SIDES IF THERE IS NO AGREEMENT BY
 4 MEDIATING THE FORM OF MEDIATION AND DISPOSITION OF THE
 5 CASES, IF THE PARTIES CANNOT COME TO AN AGREEMENT WITH
 6 THE MEDIATOR CAJOLING AND SUGGESTING AND HELPING OUT OR
 7 TRYING TO HELP OUT, THEN THIS MEDIATOR WILL DECIDE THE
 8 PROCEDURES THAT WOULD BE APPLICABLE. THERE WILL BE NO
 9 AGREEMENT. I WILL JUST DECIDE HOW WE ARE GOING TO DO
 10 IT.
 11 SO I LIKE TO ENCOURAGE EVERYBODY WHEN WE
 12 GET AROUND TO THE DISCUSSIONS TO LOOK WITH AN EYE TOWARD
 13 ME FAVORABLY MEDIATING THE PLANNING AND HANDLING OF THE
 14 MEDIATION SESSIONS. I WOULD LIKE TO HAVE THOSE EX PARTE
 15 SUBMISSIONS BY FEBRUARY 16TH. THAT IS THREE WEEKS.
 16 DOES THAT SEEM TO BE ENOUGH TIME? I GAVE KIND OF A
 17 LONGER PERIOD THAN MOST ASSIGNMENTS.
 18 MR. EVERT: JUDGE, YOU WANT THESE
 19 SUBMISSIONS TO SAY WHAT WE WOULD LIKE TO PURSUE IN TERMS
 20 OF THESE DUAL TRACKS?
 21 THE COURT: YES.
 22 MR. EVERT: THE SO-CALLED BEST 50 AND
 23 NONMALIGNANTS WITH ADDITIONAL INFORMATION WE WOULD LIKE
 24 TO PURSUE?
 25 THE COURT: THAT IS PART OF YOUR

1 SUBMISSION, SURE. THAT IS THE FIRST PART. THE SECOND
 2 PART IS HOW ARE WE GOING TO MANAGE THE PROCEDURE,
 3 NEGOTIATIONS WHATEVER YOU WANT TO CALL THEM. I'M
 4 LOOKING FOR SOME IMAGINATION HERE, I PUT DOWN ON MY
 5 MUSINGS ON THE SUBJECT SOME OF THE THINGS THAT I'M
 6 CONCERNED ABOUT. LOOK AT THOSE IN ROMAN NUMERAL VIII.
 7 SEE IF THEY NEED RESOLVING OR NOT.
 8 YOU DO HAVE MY UNDERSTANDING THAT I WILL
 9 NOT DISCLOSE THE CONTENTS OF YOUR SUBMISSION, EX PARTE
 10 SUBMISSION TO THE OTHER SIDE WITHOUT YOUR EXPRESS
 11 PERMISSION. WE MAY HAVE TO HAVE A FACE-TO-FACE, IF I
 12 CAN'T FIND MANY POINTS WHERE THE TWO SUGGESTIONS MEET,
 13 THEN WE WILL HAVE A SESSION WITH THE LIAISON COUNSEL AND
 14 THE PLAINTIFFS COUNSEL. AS ALWAYS, LIAISON COUNSEL IS
 15 RESPONSIBLE TO GET WHATEVER AUTHORITY THEY THINK THEY
 16 NEED FROM THE OTHER DEFENDANTS AND THE LAWYERS. IF
 17 THERE IS SOME REASON FOR A PARTICULAR, SOMEONE NOT ON
 18 THE LIAISON COMMITTEE, IF THERE IS -- YOU THINK A GOOD
 19 REASON WHY THAT PARTICULAR PERSON OUGHT TO BE AT THIS
 20 SESSION FOR BANGING OUT THE DETAILS, OF COURSE I WILL
 21 CONSIDER THAT. YOU CAN MAKE USE OF GOOD EFFORTS OF
 22 ANOTHER VOLUNTEER.
 23 IT'S NOT MY USUAL STYLE TO SET ANOTHER
 24 DATE AT THIS TIME BUT WE WILL HAVE ANOTHER SESSION LIKE
 25 THIS. PROBABLY ON THE SUBJECT OF -- WE CAN DO IT ALL BY

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1 LETTER, E-MAIL AND TELEPHONE UNTIL WE FIND OUT THAT WE
 2 ARE READY TO SIT DOWN, TRY TO FINISH UP THE PLAN.
 3 I ADMONISH YOU THAT IF YOU HAVE MADE
 4 REQUESTS FOR SOME OF THIS ACTION THAT YOU ARE GOING TO
 5 NOW REQUEST IN THE EX PARTE SUBMISSION, IF YOU MADE A
 6 REQUEST FOR SOME OF THAT MATERIAL BEFORE DON'T CONSIDER
 7 IT TO HAVE BEEN MADE. MAKE IT AGAIN. SO WE HAVE A
 8 COMPREHENSIVE LOOK AT THIS. OKAY.
 9 MR. LANG, DO WE NEED ANYTHING MORE?
 10 THE CLERK: I DON'T.
 11 THE COURT: DOES COUNSEL HAVE SOMETHING
 12 TO BRING TO MY ATTENTION BEFORE WE ADJOURN?
 13 MR. EVERT: NO, YOUR HONOR.
 14 MR. MCCOY: NO, JUDGE.
 15 THE COURT: THANK YOU FOR YOUR PATIENCE
 16 AND YOUR COOPERATION AND GOD SPEED IN GETTING HOME IN
 17 ONE PIECE.
 18 ALL COUNSEL: THANK YOU.
 19 THE COURT: I ONCE AGAIN APOLOGIZE FOR
 20 BEING LATE THIS MORNING.
 21 (HEARING ADJOURNED AT 4:15.)
 22
 23
 24
 25

1 I CERTIFY THAT THE FOREGOING IS A CORRECT
 2 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
 3 ABOVE-ENTITLED MATTER.
 4
 5
 6 DATE SUZANNE R. WHITE
 7 OFFICIAL COURT REPORTER
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